(18) (18)

No. 99-1687, 99-1728

Supreme Court, U.S.
FILED
CLERK

IN THE

Supreme Court of the United States

GLORIA BARTNICKI and ANTHONY F. KANE, JR.,
Petitioners,

v.

FREDERICK W. VOPPER *et al.*,
Respondents.

UNITED STATES OF AMERICA,
Petitioner,

v.

FREDERICK W. VOPPER *et al.*,
Respondents.

On Writs Of Certiorari to the United States Court of Appeals for the Third Circuit

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JOINT APPENDIX

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PETITIONS FOR CERTIORARI FILED
APRIL 19, 2000 (No. 99-1687) and APRIL 27, 2000 (No. 99-1728)
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
(SCRANTON)

Case No. 94-CV-1201

GLORIA BARTNICKI, et al.

v.

FREDERICK W. VOPPER, et al.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
8/1/94	1	COMPLAINT alleging interception of telephone conversation. Receipt #: 60524 Amt: $120.00 (ps)
9/23/94	8	ANSWER by defts Frederick W. Vopper, Keymarket of NEPA and Lackazerne, Inc.; c/s. (ks) [Entry date 09/26/94]
3/3/95	16	AMENDED complaint [1-1]; adding Jack Yocum (C of S) (is) [Entry date 03/06/95]
6/30/95	25	ANSWER by Jack Yocum to amd complaint and C of S (ls)
9/29/95	40	MOTION by plaintiff Gloria Bartnicki, plaintiff Anthony F. Kane Jr. for summary judgment & c/s. (rm)
9/29/95	42	Statement of facts by plaintiff Gloria Bartnicki, plaintiff Anthony F. Kane Jr. in support of motion for summary judgment [40-1] (rm)

DATE	NO.	PROCEEDINGS
9/29/95	43	MOTION by plaintiff Anthony F. Kane Jr., defendant Frederick W. Vopper, defendant Keymarket of NEPA for summary judgment w/cert of nonconcur, exhibits & c/s. (rm) [Entry date 10/02/95]
9/29/95	44	Statement of facts by defendant Frederick W. Vopper, defendant Keymarket of NEPA, defendant Lackazerne, Inc. in support of motion for summary judgment [43-1] (rm) [Entry date 10/02/95]
9/29/95	45	MOTION by defendant Jack Yocum for summary judgment (jh) [Entry date 10/03/95]
9/29/95	46	STATEMENT OF MATERIAL FACTS as to which there is no genuine issue to be tried by defendant Jack Yocum in support of motion for summary judgment [45-1] and c of S. (jh) [Entry date 10/03/95]
10/30/95	49	BRIEF by defendant Jack Yocum in support of motion for summary judgment [45-1] with exhs. attached and c of s. (jh)
10/30/95	50	Excerpts of Sworn Statement of Frederick Vopper Submitted in Support of Plaintiff's Motion for Summary Judgement (ps) [Entry date 10/31/95]
10/30/95	51	Excerpts of Sworn Statement of Gloria Bartnicki Submitted in Support of Plaintiff' s Motion for Summary Judgement (ps) [Entry date 10/31/95]
10/30/95	52	Excerpts of Sworn Statement of Anthony Kane Submitted in Support of Plaintiff's

DATE	NO.	PROCEEDINGS
		Motion for Summary Judgement (ps) [Entry date 10/31/95]
10/30/95	53	Brief by plaintiff Gloria Bartnicki, plaintiff Anthony F. Kane Jr. in support of motion for summary judgment (40-1), motion for summary judgment (43-1] w/ C of S. (ps) [Entry date 10/31/95]
10/30/95	54	Exhibit 1- Transcript of Taped Telephone Conversation Submitted in support of Plaintiff's Motion for Summary Judgement (ps) [Entry date 10/31/95]
10/30/95	55	EXCERPTS of Sworn Statement of John Yocum FILED by plaintiff Gloria Bartnicki, plaintiff Anthony F. Kane Jr. in support of motion for summary judgment [40-1] with 16 deposition transcripts attached. (bs) [Entry date 11/01/95]
10/30/95	56	Brief by Media Defts. in support of motion for summary judgment [43-1]. C of S 10/30/95. (bs) [Entry date 11/01/95]
10/30/95	57	Media Defts. Ans. to deft's Jack Yocum Statement of Material Facts. C of S 10/30/95. Cbs) [Entry date 11/01/95]
10/30/95	58	Media defts Ans. to pltfs' Stmt of material facts. C of S 10/30/95. (bs) [Entry date 11/01/95]
10/30/95	59	AFFIDAVIT - of deft Jack Yocum relative to the above captioned action. (jb) [Entry date 11/01/95]
11/27/95	63	Brief by plaintiff Gloria Bartnicki, plaintiff Anthony F. Kane Jr. in opposition to motion

DATE	NO.	PROCEEDINGS
		for summary judgment [45-1] with Cert of Service (ao) [Entry date 11/29/95]
11/27/95	64	Response by plaintiff Gloria Bartnicki, plaintiff Anthony F. Kane Jr. to the statement of undisputed material facts of Frederick W. Vopper, Keymarket of NEPA, Inc. and Lackazerne, Inc. with Cert of Service (ao) [Entry date 11/29/95]
11/27/95	65	Response by plaintiff Gloria Bartnicki, plaintiff Anthony F. Kane Jr. to the statement of material facts as to which deft, Jack Yocum, contends there is no genuine issue to be tried with Cert of Service. (ao) [Entry date 11/29/95]
11/27/95	66	Brief by Jack Yocum in opposition to plf's motion for summary judgment [40-1] C/S (cm) [Entry date 11/29/95]
11/27/95	67	Brief by defts' Frederick W. Vopper, Keymarket of NEPA, Lackazerne, Inc. in opposition to motion for pltfs' motion for summary judgment [40-1] with Cert of Service. (ao) [Entry date 11/30/95]
11/29/95	69	Response by defendant Jack Yocum to Media defts' statement of material facts (jw) [Entry date 12/04/95]
11/29/95	70	Response by defendant Jack Yocum to pltfs' statement of material facts (jw) [Entry date 12/04/95]
11/30/95	68	BRIEF - by plaintiffs in opposition to defts' motions for summary judgment; C of S (jb) [Entry date 12/01/95]

DATE	NO.	PROCEEDINGS
12/14/95	71	REPLY BRIEF - by defendant Jack Yocum in support of motion for summary judgment [45-1] (am)
12/14/95	72	Reply brief by defendants Vopper, Keymarket of NEPA et al in support of motion for summary judgment C of S (is) [Entry date 12/15/95]
6/17/96	73	MEMORANDUM AND ORDER: by Judge Edwin M. Kosik (1) denying motion for summary judgment [43-1] (2) denying motion for summary judgment [45-1] (3) denying motion for summary judgment [40-1] . (4) A pretrial conf shall be set forthwith. (cc: all counsel) (rm)
7/1/96	75	MOTION by defendant Frederick W. Vopper, defendant Keymarket of NEPA, defendant Lackazerne, Inc. for reconsideration of memo & order dtd 6/17/96 with Cert of NonConcurrence &. Cert of Service. (ao) [Entry date 07/02/96]
7/1/96	76	MOTION by defendant Jack Yocum for reconsideration of order dated 6/17/96 with Certs of NonConcurrence & Service. (ao) [Entry date 07/02/96]
7/16/96	78	BRIEF by defendant Jack Yocum IN SUPPORT of motion for reconsideration of order dated 6/17/96 [76-1] with Cert of Service. (ao) [Entry date 07/17/96]
7/19/96	80	BRIEF by defendant Frederick W. Vopper, defendant Keymarket of NEPA, defendant Lackazerne, Inc. IN SUPPORT of motion for reconsideration of memo & order dtd

DATE	NO.	PROCEEDINGS
		6/17/96 [75-1] with Cert of Service. (ao) [Entry date 07/22/96]
8/12/96	85	BRIEF by plaintiff Gloria Bartnicki, plaintiff Anthony F. Kane Jr. IN OPPOSITION to motion for reconsideration of order dated 6/17/96 (76-1]; reply brief due 8/25/96, motion for reconsideration of memo & order dtd 6/17/96 [75-1] reply brief due 8/25/96 & c/s. (rm)
8/29/96	86	REPLY BRIEF by defendant Jack Yocum in support of motion for reconsideration of order dated 6/17/96 [76-1] , w/ c ofS. (ci) [Entry date 09/03/96]
8/29/96	87	REPLY BRIEF- by defendants Frederick W. Vopper, Keymarket of NEPA, and Lackazerne, Inc. in support motion for reconsideration of memo & order dtd 6/17/96 [75-1], w/ c of S. (ci) [Entry date 09/03/96]
11/8/96	88	MEMORANDUM AND ORDER: by Judge Edwin M. Kosik - 1. Defts Vopper, Keymarket of NEPA, Inc.'s motion for reconsideration of order dated 6/17/96 [75-1] is denied; 2. Deft Yocum's motion for reconsideration of memo & order dated 6/17/96 [76-1] is denied; and 3. a pretrial conference shall be set forthwith. (cc: all counsel) (ao)
12/31/97	96	ORDER by Judge Edwin M. Kosik THAT: The above case being certified for an appeal to the USCA for the 3rd Circuit, the Clerk of Court is directed to close this case. Case terminated (cc: all counsel) (ep)

DATE	NO.	PROCEEDINGS
1/7/98	97	ORDER by Judge Edwin M. Kosik certifying that Memo & Order dated June 14, 1996, and Order of 11/8/96 involve controlling questions of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order will materiall advance the ultimate termination of this litigation (cc: all counsel) (ep)
3/2/98	98	CERTIFIED COPY of Appellate Court Order: The foregoing petition for permission to appeal is GRANTED; USCA # 98-8010 (ep) [Entry date 03/03/98]
3/3/98	99	RECEIPT #: 333 70901 Amount: $105.00 From: counsel for pltf Purpose: Appeal FF (ao) [Entry date 03/12/98]
3/3/98	99	Notice of appeal by defendants from District Court orders filed 11/8/96 (88-1] & 6/17/98 [73-1] (Filing fee paid, TPO handed to attorney, certified copies, notice of appeal, order being appealed, with info/ack letter, orders filed 11/8/96 [8a-1] & 6/17/96 [73-1] to USCA. (CC: cnsl, Ct.) Receipt No. & Amt: 333 70901 (ep) [Entry date 03/13/98]

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

Case No. 98-7156

GLORIA BARTNICKI, *et al.*

v.

FREDERICK W. VOPPER, *et al.*

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
3/26/98	CIVIL CASE DOCKETED. Notice filed by Frederick W. Vopper, Keymarket NEPA Inc. and Lackazerne Inc. Case Transferred from Misc. No. 98—8010. (ddw)
8/3/98	AMENDED-BRIEF on behalf of Appellant's Frederick W. Vopper
8/5/98	BRIEF on behalf of Appellee Jack Yocum, Pages: 20, Copies: 10, Delivered by mail, filed. Certificate of Service date 7/3/98. (ddw)
8/20/98	BRIEF on behalf of Appellees Gloria Bartnicki and Anthony F. Kane, Pages: 30, Copies: 10, Delivered by mail, filed. Certificate of Service date 8/20/98. (ddw)
8/21/ 98	MOTION filed by Proposed Amicus-Appellee PA State Ed Assoc for leave to file brief as amicus curiae. Answer due 8/31/98. Certificate of Service dated 8/20/98. (ddw)

DATE	PROCEEDINGS
8/31/98	ORDER (Sloviter, Authoring Judge, Cowen, Circuit Judges and Pollak, District Judge) granting motion for leave to file brief as amicus curiae by PA State Ed Assoc., filed. (ddw)
8/31/ 98	AMICUS BRIEF on behalf of PA State Ed Assoc. Pages: 21, Delivered by mail, filed. Certificate of Service date 8/20/98. (ddw)
10/5/98	ARGUED Monday, October 5, 1998 Panel: Sloviter, Cowen, Circuit Judges and Pollak, District Judge. (cg)
10/6/98	CLERK'S LETTER to counsel written at the direction of the Court to Hon. D. Michael Fisher, Attorney General of the Commonwealth of Pennsylvania, Janet Reno, Attorney General of the United States and to the United States Attorney of the Middle District of Pennsylvania, David M. Barasch, with copies to all counsel. (See letter for particulars). (cg)
11/18/98	MOTION filed by USA for leave to intervene. Answer due 11/27/98. Certificate of Service dated 11/17/98. (ddw)
12/30/98	ORDER (Sloviter, Authoring Judge, Cowen, Circuit Judges and Pollak, District Judge) granting motion by USA for leave to intervene, filed. (ddw)
12/30/98	INTERVENOR BRIEF on behalf of USA, Pages: 42 Copies: 10 Delivered by mail, filed. Certificate of service date 11/17/98. (ddw)
8/27/99	ORDER (Clerk) advising on January 14, 1999, Frederick W. Vopper a/k/a Fred Williams Keymarket of NEPA, Inc., d/b/a WILK Radio, and Lackazerne, Inc. d/b/a WGBI Radio, who were-defendants in the lower court, filed a petition for

DATE	PROCEEDINGS
	leave to appeal in the Court of Appeals. Defendant Jack Yocurn filed an answer to the petition for leave to appeal in which Yocum stated that he "concurs in the Media Defendants' Petition for Permission to Appeal and hereby joins in the request. . . ". By order entered February 26, 1998, this Court granted the petition for leave to appeal. It appearing that the answer filed by Yocum should have also been construed as a joinder in the petition for leave to appeal and that the petition was subsequently granted, it is hereby ordered that Jack Yocum is deemed an appellant in the appeal pending before the Court, filed. (mmb)
12/27/99	PUBLISHED OPINION (Sloviter, Authoring Judge, Cowen, Circuit Judges, Pollak*, District Judge), filed.* Honorable Louis H. Pollak, Senior Judge of the United States District Court for the Eastern District of Pennsylvania, sitting by designation. (clc)
12/27/99	JUDGMENT reversed and remanded to the district court with instructions to grant the motion for summary judgment in favor of the defendants. Costs taxed against appellees, filed. (clc)
1/7/00	ORDER AMENDING DISSENTING OPINION Sloviter, Cowen, Circuit Judges, Pollak, Authoring Judge, filed. (sma)
2/10/00	PETITION by Appellees and Amicus-appellee for rehearing en banc. Certificate of service dated 2/9/00, filed. (lc)
2/10/00	PETITION by Intervenor USA for rehearing en banc. Certificate of Service dated 2/9/00, filed. (lc)

DATE	PROCEEDINGS
2/25/00	ORDER (Becker, Chief Judge, Sloviter, Authoring Judge, Mansmann, Greenberg, Scirica, Nygaard, Alito, Roth, McKee, Rendell, Barry, Circuit Judges, Pollak*, District Judge) denying petition for in banc rehearing by Appellees Gloria-Bartnicki, Anthony F. Kane Jr. and Amicus-appellee PA State Ed Assoc. and denying petition for in banc rehearing by Intervenor USA. Judges Greenberg, Scirica, Nygaard, Alito and Rendell would have granted the petitions for rehearing, filed. *Sitting by designation (lc)
2/28/00	AMENDED ORDER (Becker, Chief Judge, Sloviter, Authoring Judge, Mansmann, Greenberg, Scirica, Nygaard, Alito, Roth, McKee, Rendell, Barry, Cowen*, Circuit Judges, Pollak*, District Judge) denying petition for in banc rehearing by Appellees Gloria Bartnicki and Anthony F. Kane Jr. and Amicus-appellee PA State Ed Assoc. and denying petition for in banc rehearing by Intervenor USA. Judges Greenberg, Scirica, Nygaard, Alito and Rendell would have granted the petitions for rehearing, filed. *Limited to panel rehearing only (lc)
3/6/00	MANDATE ISSUED, filed. (lc)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Case No.

GLORIA BARTNICKI and
ANTHONY F. KANE, JR.,
Plaintiffs

v.

FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZERNE, INC., d/b/a WGBI RADIO, JANE DOE and JOHN DOE,
Defendants

COMPLAINT

The Plaintiffs, GLORIA BARTNICKI AND ANTHONY F. KANE, JR., by and through their counsel, Koff, Wendolowski, Ferguson & Mangan, P.C., hereby complain of the Defendants as follows:

I. Jurisdiction and Venue

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331. This action is authorized and instituted pursuant to 18 U.S.C. § 2520(e).

2. Supplemental jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1367 over the pendant state law claim that is authorized and instituted pursuant to 18 Pa.C.S. § 5725. The aforesaid state law claim is so related to the Federal claim that they form part of the same case or controversy under Article III of the United States Constitution.

3. Venue of this action is proper pursuant to 28 U.S.C. § 1391(b) in the United States District Court for the Middle District of Pennsylvania since a substantial part of the events

giving rise to this claim occurred in the Middle District of Pennsylvania.

II. Parties

4. Plaintiff, GLORIA BARTNICKI ("BARTNICKI"), is an adult individual who conducts business at 1124 Highway 315, Wilkes-Barre, Luzerne County, Pennsylvania.

5. Plaintiff, ANTHONY F. KANE, JR. ("KANE"), is an adult individual who conducts business at the Wyoming Valley Middle School, Chester Street, Kingston, Luzerne County, Pennsylvania.

6. Defendant, FREDERICK W. VOPPER ("VOPPER"), is an adult individual who resides at R.R. #6, Dallas, Luzerne County, Pennsylvania 18612. FREDERICK W. VOPPER is also known as FRED WILLIAMS and is employed by Defendants Keymarket and Lackazerne in the capacity of "radio talk show host."

7. Defendant, Keymarket of NEPA, Inc. ("KEYMARKET"), is now, and at all times mentioned in this Complaint was, a Georgia corporation licensed to do business in Pennsylvania, with a registered Pennsylvania address at 156 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. Defendant KEYMARKET is the licensee of a Federal Communications Commission AM Radio Broadcasting license to transmit at 980 KHZ, and does business under the call letters WILK Radio.

8. Defendant, Lackazerne, Inc. ("LACKAZERNE"), is now, and at all times mentioned in this Complaint was, a Georgia corporation licensed to do business in Pennsylvania, with a registered Pennsylvania address at 305 Highway 315, Pittston, Pennsylvania 18640. Defendant LACKAZERNE is the licensee of a Federal Communications Commission AM Radio Broadcasting license to transmit at 910 KHZ, and does business under the call letters WGBI Radio.

9. JOHN DOE and JANE DOE are yet unknown individuals who allegedly intercepted the electronic communication of the Plaintiffs and allegedly disclosed said communication.

III. The Illegal Activity

10. At all times relevant herein, Defendant Vopper hosted a radio talk show that aired each day on WGBI-910 AM and WILK-980 AM Radio Stations from 9:00 a.m. to 12:00 p.m.

11. In or about May, 1993, a telephone conversation between BARTNICKI and KANE was surreptitiously intercepted through the use of an electronic, mechanical, or other device by JANE DOE and/or JOHN DOE, a person or persons whose identities are still unknown to the Plaintiffs.

12. Neither of the parties to the telephone conversation, BARTNICKI or KANE, authorized the aforementioned interception, monitoring and recording of the telephone communication.

13. Neither BARTNICKI nor KANE had any reason to believe that any wiretapping mechanism had been placed on the telephone, or ever consented, expressly or impliedly, to the installation of such mechanism or to the interception, monitoring or recording of such communications.

14. At some point prior to September 30, 1993, JANE DOE and/or JOHN DOE disclosed the surreptitiously recorded telephone conversation to the Defendant VOPPER, and/or other unknown representatives of the Defendants KEYMARKET and LACKAZERNE.

15. On or about September 30, 1993, and continuing on a daily basis through October, 1993, and repeatedly thereafter, Defendant VOPPER, acting as the duly authorized agent of Defendants KEYMARKET and LACKAZERNE, intentionally disclosed and published to the public the entire contents of the private telephone conversation between BARTNICKI and KANE.

16. Defendant VOPPER, acting as the duly authorized agent of Defendants KEYMARKET and LACKAZERNE knew or had reason to know that the private telephone conversation between BARTNICKI and KANE was obtained surreptitiously through the illegal interception of their telephone communication.

COUNT I—VIOLATION OF 18 U.S.C. § 2510, et seq.

17. The averments contained in paragraphs 1 through 16 are hereby incorporated by reference as though fully set forth herein.

18. Defendants' aforementioned actions constitute an unlawful interception, disclosure and use of electronic communications, prohibited by 18 U.S.C. § 2511(1), which provides, in pertinent part as follows:

> (1) Except as otherwise specifically provided in this chapter any person who . . .
>
> (c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or
>
> (d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;
>
> shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

19. 18 U.S.C. § 2520(a) provides, in pertinent part as follows:

> "Any person whose wire, oral or electronic communication is intercepted, disclosed or intentionally used

in violation of this chapter may in a civil action recover from the person or entity that engaged in that violation such relief as may be appropriate."

20. By reason of Defendants' unlawful actions, set forth above, Plaintiffs have suffered actual damages in excess of $50,000.00.

21. Pursuant to 18 U.S.C. § 2520(c)(2), Plaintiffs are entitled to statutory damages.

22. Pursuant to 18 U.S.C. § 2520(b)(2), Plaintiffs are entitled to punitive damages.

23. Pursuant to 18 U.S.C. § 2520(b)(3), Plaintiffs are entitled to a reasonable allowance for attorneys' fees and other litigation costs reasonably incurred.

WHEREFORE, Plaintiffs request judgment against Defendants as follows:

1. Actual damages in excess of $50,000.00;
2. Statutory damages;
3. Punitive damages;
4. Reasonable attorney's fees and other litigation costs reasonably incurred in this action; and
5. Such other and further relief as this Court deems just and proper.

COUNT II—VIOLATION OF 18 Pa.C.S. § 5701, et seq.

24. The averments contained in paragraphs 1 through 23 are hereby incorporated by reference as though fully set forth herein.

25. The Defendants' above described action is an unlawful disclosure and use of electronic communications, prohibited by 18 Pa.C.S. § 5703, which provides, in pertinent part, as follows:

Except as otherwise provided in this chapter, a person is guilty of a felony of the third degree if he:

. . .

(2) intentionally discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication; or

(3) intentionally uses or endeavors to use the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire, electronic or oral communication.

26. 18 Pa.C.S. § 5725(a) provides, in pertinent part, as follows:

"Any person whose wire, electronic or oral communication is intercepted, disclosed or used in violation of this Chapter shall have a civil cause of action against any person who intercepts, discloses, or uses or procures any other person to intercept, disclose or use, such communication . . . ."

27. By reason of Defendants' unlawful actions set forth above, Plaintiffs have suffered actual damages in excess of $50,000.00.

28. Pursuant to 18 Pa.C.S. § 5725(a)(l), Plaintiffs are entitled to liquidated damages.

29. Pursuant to 18 Pa.C.S. § 5725(a)(2), Plaintiffs are entitled to punitive damages.

30. Pursuant to 18 Pa.C.S. § 5725(a)(3), Plaintiffs are entitled to a reasonable allowance for attorney's fees and other litigation costs reasonably incurred.

WHEREFORE, Plaintiffs request judgment against Defendants as follows:

1. Actual damages in excess of $50,000.00;
2. Liquidated damages pursuant to 18 Pa.C.S. § 5725(a)(1);
3. Punitive damages;
4. Reasonable attorney's fees and other litigation costs reasonably incurred in this action; and
5. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

KOFF, WENDOLOWSKI, FERGUSON & MANGAN, P.C.

By: /s/ Raymond P. Wendolowski, Esq.
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Attorneys for Plaintiffs,
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and ANTHONY F. KANE, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Filed Sep. 23, 1994]

Case No.3:94-CV-01201
(Judge Kosik)

GLORIA BARTNICKI and
ANTHONY F. KANE, JR.,
Plaintiffs

vs.

FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZERNE, INC., d/b/a WGBI RADIO, JANE DOE and JOHN DOE,
Defendants

ANSWER

The Defendants, Frederick W. Vopper, a/k/a Fred Williams, Keymarket of NEPA, Inc, d/b/a WILK Radio, and Lackazerne, Inc., d/b/a WGBI Radio, by and through their counsel, Rosenn, Jenkins & Greenwald, hereby answers the complaint as follows:

1. Admitted.

2. Denied. The averments set forth in paragraph 2 are conclusions of law which are denied without the necessity of a responsive pleading.

3. Admitted.

4.-5. Denied. After reasonable investigation Defendants are without sufficient knowledge to form a belief as to the truth of the averments in these paragraphs, and, therefore, those averments are denied.

6. Admitted in part and denied in part. It is denied that Defendant Vopper's residential address is R.R. #6, Dallas,

Luzerne County, Pennsylvania 18612. The remaining averments set forth in paragraph 6 are admitted.

7. Admitted in part and denied in part. It is specifically denied that Defendant Keymarket's registered Pennsylvania address is 156 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. For further answer it is averred that said address is 305 Highway 315, Pittston, Pennsylvania 18640. The remaining averments in paragraph 7 are admitted.

8. Admitted.

9. Denied. After reasonable investigation Defendants are without sufficient knowledge or information to form a belief as to the truth of the averments set forth in this paragraph, and, therefore those averments are denied.

10. Admitted.

11.-13. Denied. After reasonable investigation, Defendants are without sufficient knowledge to form a belief as to the truth of the averments set forth in these paragraphs, and therefore those averments are denied.

14. Denied as stated. The averments set forth in Paragraph 14 are denied. For further answer it is averred that at some point prior to September 30, 1993, Jane and/or John Doe disclosed a recorded telephone conversation to the Defendant Vopper.

15. Denied. It is denied that the telephone conversation was private. It is specifically denied that Defendant Vopper repeatedly disclosed and published to the public the entire contents of the private telephone conversation between Bartnicki and Kane. For further answer it is averred that he did so on only two occasions.

16. Denied. The allegations set forth in paragraph 16 are specifically denied. It is denied that the telephone conversation was illegally intercepted. For further answer it is averred that the Defendants did not know and did not have reason to know that the telephone conversation between

Bartnicki and Kane was obtained surreptitiously through the illegal interception of their telephone communication.

17. The averments contained in paragraphs 1 through 16 of this Answer are hereby incorporated by reference as though fully set forth herein.

18.-19. Denied. The averments set forth in paragraphs 18 and 19 are conclusions of law which are denied without the necessity of a responsive pleading.

20. Denied. It is specifically denied that the answering Defendants have engaged in any unlawful actions or that the Plaintiffs have suffered any actual damages as a result of any actions of the answering Defendants.

21.-23. Denied. The averments set forth in paragraphs 21 through 23 are conclusions of law which are denied without the necessity of a responsive pleading.

WHEREFORE, the Defendants, Frederick W. Vopper, a/k/a Fred Williams, Keymarket of NEPA, Inc., d/b/a WILK Radio, and Lackazerne, Inc., d/b/a WGBI Radio, respectfully request the Court to enter judgment in their favor and against the Plaintiffs.

24. The averments contained in paragraphs 1 through 23 of this Answer are hereby incorporated by reference as though fully set forth herein.

25.-26. Denied. The allegations set forth in paragraphs 25 and 26 are legal conclusions of law which are denied without the necessity of a responsive pleading. For further answer it is specifically averred that the Defendants' above-described action is a lawful disclosure and use of electronic communications.

27. Denied. it is specifically denied that the answering Defendants are engaged in any unlawful actions or that Plaintiffs have suffered any actual damages as a result of the conduct of the answering Defendants.

28.-30. Denied. The averments set forth in paragraphs 28 through 30 are conclusions of law which are denied without the necessity of a responsive pleading.

WHEREFORE, the Defendants, Frederick W. Vopper, a/k/a Fred Williams, Keymarket of NEPA, Inc., d/b/a WILK Radio, and Lackazerne, Inc., d/b/a WGBI Radio, respectfully requests the Court to enter judgment in their favor and against the Plaintiffs.

FIRST AFFIRMATIVE DEFENSE

The Complaint should be dismissed because it fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The answering Defendants broadcast of the tape in question, a transcript of which is attached hereto as Exhibit "A", concerned a matter of public concern—namely, the threat of a school teacher involved in a public school teachers' strike to blow off the front porches of the homes of school directors in order to get the school directors to agree to what the teachers wanted; hence said broadcast is protected by the First Amendment and cannot be subjected to penalty under the federal or Pennsylvania statutes pursuant to which Plaintiffs attempt to assert a claim.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs had no reasonable expectation of privacy with respect to the cellular telephone conversation which is the subject of their claim and, therefore, they do not have a cause of action against the Defendants.

ROSENN, JENKINS & GREENWALD

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Attorneys for Defendants, Frederick W. Vopper, a/k/a Fred Williams, Keymarket of NEPA, Inc., d/b/a WILK Radio, and Lackazerne, Inc., d/b/a WGBI Radio.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Filed Feb. 23, 1995]

Case No.

GLORIA BARTNICKI and
ANTHONY F. KANE, JR.,
Plaintiffs

v.

FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZERNE, INC., d/b/a WGBI RADIO, JANE DOE and JOHN DOE, and JACK YOCUM,
Defendants

AMENDED COMPLAINT

The Plaintiffs, GLORIA BARTNICKI and ANTHONY F. KANE, JR., by and through their counsel, Koff, Wendolowski, Ferguson & Mangan, P.C., hereby complain of the Defendants as follows:

I. Jurisdiction and Venue

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331. This action is authorized and instituted pursuant to 18 U.S.C. § 2520(e).

2. Supplemental jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1367 over the pendant state law claim that is authorized and instituted pursuant to 18 Pa.C.S. § 5725. The aforesaid state law claim is so related to the Federal claim that they form part of the same case or controversy under Article III of the United States Constitution.

3. Venue of this action is proper pursuant to 28 U.S.C. § 1391(b) in the United States District Court for the Middle District of Pennsylvania since a substantial part of the events giving rise to this claim occurred in the Middle District of Pennsylvania.

II. Parties

4. Plaintiff, GLORIA BARTNICKI ("BARTNICKI"), is an adult individual who conducts business at 1124 Highway 315, Wilkes-Barre, Luzerne County, Pennsylvania.

5. Plaintiff, ANTHONY F. KANE, JR ("KANE"), is an adult individual who conducts business at the Wyoming Valley Middle School, Chester Street, Kingston, Luzerne County, Pennsylvania.

6. Defendant, FREDERICK W. VOPPER ("VOPPER"), is an adult individual who resides at R.R. #6, Dallas, Luzerne County, Pennsylvania 18612. FREDERICK W. VOPPER is also known as FRED WILLIAMS and is employed by Defendants Keymarket and Lackazerne in the capacity of "radio talk show host."

7. Defendant, JACK YOCUM ("YOCUM"), is an adult individual who resides at 1917 Englewood Terrace, Forty Fort, Luzerne County, Pennsylvania. Yocum received and disclosed the intercepted electronic communication of the Plaintiffs.

8. Defendant, Keymarket of NEPA, Inc. ("KEYMARKET"), is now, and at all times mentioned in this Complaint was, a Georgia corporation licensed to do business in Pennsylvania, with a registered Pennsylvania address at 156 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. Defendant KEYMARKET is the licensee of a Federal Communications Commission AM Radio Broadcasting license to transmit at 980 KHZ, and does business under the call letters WILK Radio.

9. Defendant, Lackazerne, Inc. ("LACKAZERNE"), is now, and at all times mentioned in this Complaint was, a Georgia corporation licensed to do business in Pennsylvania, with a registered Pennsylvania address at 305 Highway 315, Pittston, Pennsylvania 18640. Defendant LACKAZERNE is the licensee of a Federal Communications Commission AM Radio Broadcasting license to transmit at 910 KHZ, and does business under the call letters WGBI Radio.

10. JOHN DOE and JANE DOE are yet unknown individuals who allegedly intercepted and disclosed the electronic communication of the Plaintiffs.

III. The Illegal Activity

11. At all times relevant herein, Defendant Vopper hosted a radio talk show that aired each day on WGBI-910 AM and WILK-980 AM Radio Stations from 9:00 a.m. to 12:00 p.m.

12. In or about May, 1993, a telephone conversation between BARTNICKI and KANE was surreptitiously intercepted through the use of an electronic, mechanical, or other device by JANE DOE and/or JOHN DOE, a person or persons whose identities are still unknown to the Plaintiffs.

13. Neither of the parties to the telephone conversation, BARTNICKI or KANE, authorized the aforementioned interception, monitoring and recording of the telephone communication.

14. Neither BARTNICKI nor KANE had any reason to believe that any wiretapping mechanism had been placed on the telephone, or ever consented, expressly or impliedly, to the installation of such mechanism or to the interception, monitoring or recording of such communications.

15. At some point prior to September 30, 1993, YOCUM obtained a tape of the surreptitiously recorded telephone conversation and intentionally disclosed the tape to several individuals and media sources including but not limited to,

the Defendant VOPPER, and/or other unknown representatives of the Defendants KEYMARKET and LACKAZERNE, and without the permission, knowledge, or consent of the Plaintiffs.

16. On or about September 30, 1993, and continuing on a daily basis through October, 1993, and repeatedly thereafter, Defendant VOPPER, acting as the duly authorized agent of Defendants KEYMARKET and LACKAZERNE, intentionally disclosed and published to the public the entire contents of the private telephone conversation between BARTNICKI and KANE.

17. Defendant YOCUM knew or had reason to know that the private telephone conversation between BARTNICKI and KANE was obtained surreptitiously through the illegal interception of their telephone conversation.

18. Defendant VOPPER, acting as the duly authorized agent of Defendants KEYMARKET and LACKAZERNE knew or had reason to know that the private telephone conversation between BARTNICKI and KANE was obtained surreptitiously through the illegal interception of their telephone communication.

COUNT I—VIOLATION OF 18 U.S.C. § 2510, et seq.

19. The averments contained in paragraphs 1 through 18 are hereby incorporated by reference as though fully set forth herein.

20. Defendants' aforementioned actions constitute an unlawful interception, disclosure and use of electronic communications, prohibited by 18 U.S.C. § 2511(1), which provides, in pertinent part as follows:

> (1) Except as otherwise specifically provided in this chapter any person who . . .
>
> (c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or

electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

21. 18 U.S.C. § 2520(a) provides, in pertinent part as follows:

"Any person whose wire, oral or electronic communication is intercepted, disclosed or intentionally used in violation of this chapter may in a civil action recover from the person or entity that engaged in that violation such relief as may be appropriate."

22. By reason of Defendants' unlawful actions, set forth above, Plaintiffs have suffered actual damages in excess of $50,000.00.

23. Pursuant to 18 U.S.C. § 2520(c)(2), Plaintiffs are entitled to statutory damages.

24. Pursuant to 18 U.S.C. § 2520(b)(2), Plaintiffs are entitled to punitive damages.

25. Pursuant to 18 U.S.C. § 2520(b)(3), Plaintiffs are entitled to a reasonable allowance for attorneys' fees and other litigation costs reasonably incurred.

WHEREFORE, Plaintiffs request judgment against Defendants as follows:

1. Actual damages in excess of $50,000.00;

2. Statutory damages;

3 Punitive damages;

4. Reasonable attorney's fees and other litigation costs reasonably incurred in this action; and

5. Such other and further relief as this Court deems just and proper.

COUNT II—VIOLATION OF 18 Pa.C.S. § 5701, et seq.

26. The averments contained in paragraphs 1 through 23 are hereby incorporated by reference as though fully set forth herein.

27. The Defendants' above described action is an unlawful disclosure and use of electronic communications, prohibited by 18 Pa.C.S. § 5703, which provides, in pertinent part, as follows:

Except as otherwise provided in this chapter, a person is guilty of a felony of the third degree if he:

(2) intentionally discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication; or

(3) intentionally uses or endeavors to use the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire, electronic or oral communication.

28. 18 Pa.C.S. § 5725(a) provides, in pertinent part, as follows:

"Any person whose wire, electronic or oral communication is intercepted, disclosed or used in violation of this Chapter shall have a civil cause of action against any person who intercepts, discloses, or uses or procures any

other person to intercept, disclose or use, such communication . . . ."

29. By reason of Defendants' unlawful actions set forth above, Plaintiffs have suffered actual damages in excess of $50,000.00.

30. Pursuant to 18 Pa.C.S. § 5725(a)(1), Plaintiffs are entitled to liquidated damages.

31. Pursuant to 18 Pa.C.S. § 5725(a)(2), Plaintiffs are entitled to punitive damages.

32. Pursuant to 18 Pa.C.S. § 5725(a)(3), Plaintiffs are entitled to a reasonable allowance for attorney's fees and other litigation costs reasonably incurred.

WHEREFORE, Plaintiffs request judgment against Defendants as follows:

1. Actual damages in excess of $50,000.00;
2. Liquidated damages pursuant to 18 Pa.C.S. § 5725(a)(1);
3. Punitive damages;
4. Reasonable attorney's fees and other litigation costs reasonably incurred in this action; and
5. Such other and further relief as this Court deems just and proper.

Respectfully submitted.

KOFF, WENDOLOWSKI, FERGUSON, & MANGAN, P.C.

By: /s/ Raymond P. Wendolowski, Esq.
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Attorneys for Plaintiffs, GLORIA BARTNICKI and ANTHONY F. KANE, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Filed Jun. 30, 1995]

CASE NO. 3: CV-94-1201 FILED

GLORIA BARTNICKI AND
ANTHONY F. KANE, JR.,

Plaintiffs

VS.

FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZWERNE, INC., d/b/a WGBI RADIO, JANE DOE and JOHN DOE, and JACK YOCUM,

Defendants

ANSWER TO AMENDED COMPLAINT

Defendant, JACK YOCUM, by and through his counsel, FRANK J. ARITZ, ESQUIRE and CHARLES GEROW, ESQUIRE, hereby answer the Amended Complaint of the plaintiffs, the following being a statement thereof:

I. JURISDICTION AND VENUE

1. Admitted.

2. Denied. The averments in paragraph 2 constitute conclusions of law which are denied without the necessity of a responsive pleading.

3. Admitted.

II. PARTIES

4. Denied. After reasonable investigation, the answering Defendant is without sufficient knowledge to form a belief as to the truth of the averments in this paragraph and, therefore, the averments are denied.

5. Denied. After reasonable investigation, the answering Defendant is without sufficient knowledge to form a belief as to the truth of the averments in this paragraph and, therefore, the averments are denied.

6. The averment in paragraph 6 is not directed to the answering Defendant, and, therefore, no response is necessary.

7. Admitted in part. Denied in part. It is admitted that the Defendant, JACK YOCUM, is an adult individual who resides at 1917 Englewood Terrace, Forty Fort, Luzerne County, Pennsylvania. It is admitted that YOCUM received a copy of a tape recorded conversation. It is denied that the electronic communication was intercepted and disclosed by Defendant, YOCUM, in that the use of the word disclosed is a conclusion of fact and/or law. The answering Defendant is without sufficient knowledge to form a belief as to the truth of the averment that the electronic communication in question was intercepted and, therefore, this averment is denied.

8. The averment contained in paragraph number 8 is not directed to the answering Defendant, and, therefore, no response is necessary.

9. The averment contained in paragraph under 9 is not directed to the answering Defendant, and, therefore, no response is necessary.

10. After reasonable investigation the answering Defendant is without sufficient knowledge or information to form a belief as to the truth of the averment set forth in this paragraph and, therefore, these averments are denied.

III. THE ILLEGAL ACTIVITY

11. The averment contained in paragraph 11 is not directed to the answering Defendant and, therefore, no answer is necessary.

12. After reasonable investigation, the answering Defendant is without sufficient knowledge to form a belief as to the truth of the averments set forth in this paragraph and, therefore, these averments are denied.

13. Denied. After reasonable investigation, the answering Defendant is without sufficient knowledge to form a belief as to the truth of the averments set forth in this paragraph and, therefore, these averments are denied.

14. Denied. After reasonable investigation, the answering Defendant is without sufficient knowledge to form a belief as to the truth of the averments set forth in this paragraph and, therefore, these averments are denied.

15. Denied in part. Admitted in part. It is admitted that at some point prior to September 30, 1993, YOCUM received a tape of a conversation from an unknown and anonymous source. With respect to the averment that such tape was surreptitiously recorded the answering Defendant, after reasonable investigation, is without sufficient knowledge to form a belief as to the truth of this averment and, therefore, same is denied. The averment that YOCUM intentionally disclosed the tape to several individuals and media sources is a conclusion of fact and/or law with respect to the use of the term disclosed and same needs no response. It is admitted that YOCUM provided to the Defendant, VOPPER, a copy of the tape recorded conversation. The averment that the various allegations contained in paragraph 15 relating to various acts were performed without the permission, knowledge or consent of the Plaintiffs is an averment that is denied for the reason that after reasonable investigation, the answering Defendant is without sufficient knowledge to form a belief as to the truth of the averment set forth and, therefore, said averment is denied.

16. Paragraph 16 contains averments not directed to the answering Defendant and, therefore, no answer is required.

17. Denied. The averments in paragraph 17 constitute conclusions of fact or law which are denied without the necessity of a responsive pleading.

18. Paragraph 18 contains averments not directed to the answering Defendant and, therefore, no response is necessary.

COUNT I—VIOLATION OF 18 U.S.C. § 2510, et seq.

19. Paragraphs one through 18 of the foregoing Answer are incorporated herein by reference thereto with the same force and effect as if set forth here at length.

20. Denied. The paragraphs set forth in paragraph 20 constitute conclusions of law and same are denied and no response is necessary.

21. Denied. The paragraphs set forth in paragraph 21 constitute conclusions of law and same are denied and no response is necessary.

22. It is denied that the answering Defendant has engaged in any unlawful activity and it is further denied that the Plaintiffs have suffered any actual damages as a result of any alleged action on the part of the answering Defendant.

23. Denied. Plaintiffs state a conclusion of law which is denied and no response is necessary.

24. Denied. Plaintiffs state a conclusion of law which is denied and no response is necessary.

25. Denied. Plaintiffs state a conclusion of law which is denied and no response is necessary.

WHEREFORE, answering Defendant, JACK YOCUM, respectfully requests that your Honorable Court enter judgment in his favor and against the Plaintiffs.

COUNT II—VIOLATION OF 18 Pa. C.S. § 5701, et seq.

26. The answers contained in paragraphs one through 25 of this Answer are incorporated herein by reference with the same force and effect as if set forth here at length.

27. It is specifically denied that the answering Defendant's actions constitute an unlawful disclosure and use of electronic communications. Additionally, the averments in paragraph 27 are denied in that they constitute a conclusion of law which are denied and no response is necessary.

28. Denied. The allegations set forth in paragraph 28 constitute conclusions of law which are denied and no response is necessary.

29. It is specifically denied that the answering Defendant, JACK YOCUM, engaged in any unlawful actions and it is further denied that Plaintiffs have suffered actual damages as a result of any alleged conduct on the part of the answering Defendant.

30. Denied. Plaintiffs state a conclusion of law which is denied without the necessity of a response.

31. Denied. Plaintiffs state a conclusion of law which is denied without the necessity of a response.

32. Denied. Plaintiffs state a conclusion of law which is denied without the necessity of a response.

WHEREFORE, Defendant, JACK YOCUM, respectfully requests that your Honorable Court enter judgment in his favor and against the Plaintiffs.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint should be dismissed because it fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs in this case had no reasonable expectation of privacy with respect to a conversation carried on over a cellular telephone and, therefore, their claim must fail since they have no cause of action against the answering Defendant.

THIRD AFFIRMATIVE DEFENSE

The answering Defendant, JACK YOCUM, has a defense of privilege since the conversation in question contained threats of potential grievious bodily harm or damage to property made by teacher union members and directed against school directors. The answering Defendant provided a copy of the conversation to the investigative news media for the purpose of protecting any possible board member or other individuals from bodily harm. Answering Defendant's conduct in this regard was patently reasonable and, in fact honorable. The matter was one of serious public concern and the answering Defendant, JACK YOCUM, was privileged to provide a copy of the tape to the news media.

FOURTH AFFIRMATIVE DEFENSE

Inasmuch as Plaintiffs have now stipulated that there were no actual damages which resulted from the alleged acts of any Defendants in this matter, and further, that no averments have been made against Defendant, YOCUM, which would constitute grounds upon which punitive damages could be awarded, no valid claim arises for such.

FIFTH AFFIRMATIVE DEFENSE

Any action taken by the answering Defendant in this case is an act that is protected by the First Amendment and is not subject to penalty under the state or federal statutes recited by the Plaintiffs in their Complaint.

Respectfully submitted,

/s/ Frank J. Aritz, Esquire
FRANK J. ARITZ, ESQUIRE
CHARLES GEROW, ESQUIRE
Counsel for Defendant, JACK YOCUM
23 West Walnut Street
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IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Case No. 3:94-CV-01201
(Judge Kosik)

GLORIA BARTNICKI and
ANTHONY F. KANE, JR.,

Plaintiffs

-v.

FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZERNE, INC., d/b/a WGBI RADIO, JANE DOE and JOHN DOE, and JACK YOCUM,

Defendants

STATEMENT OF UNDISPUTED MATERIAL FACTS

The Defendants, FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, and LACKAZERNE, INC., d/b/a WGBI RADIO, by and through their attorneys, Rosenn, Jenkins & Greenwald, L.L.P., hereby submit the instant Statement of Undisputed Material Facts in connection with their Motion for Summary Judgment and aver as follows:

1. In or about May, 1993, BARTNICKI had telephoned KANE using her cellular telephone to discuss the ongoing contract negotiations and labor dispute between the Wyoming Valley West School Teachers' Union and School Board during which KANE stated to BARTNICKI that it may be necessary to blow off the front porches of some of the school directors in order to get the school directors to agree to what the teachers wanted.

2. Someone unknown intercepted and tape recorded this cellular telephone conversation.

3. At the time the cellular telephone conversation took place, there had been pending for a period of over a year a bitter labor dispute and contract negotiation between the Wyoming Valley West School teachers and the School Board; this dispute and these negotiations had been highly publicized in both the electronic and print media.

* * * *

5. Defendant, YOCUM, was the leader of the Taxpayers' Group which had opposed the position taken by the Teachers' Union in its contract negotiations with the Wyoming Valley West School District.

6. Subsequently, Defendant, YOCUM, delivered on his own volition a copy of the tape to the office of WILK RADIO.

7. Defendant, YOCUM, also delivered copies of the tape to other members of the media.

8. Other members of the media, including a television station, also played portions of the aforesaid tape of the cellular telephone conversation, and the newspapers quoted from said tape in news stories pertaining thereto.

9. Sometime after the tape had been delivered, WILK played the entire tape, and portions thereof, during the radio broadcast of the FRED WILLIAMS' show on WGBI-910 AM and WILK-980 AM RADIO in about October of 1993.

10. A true and correct copy of the transcript of the cellular phone conversation of the tape played on the FRED WILLIAMS' show is attached hereto as Exhibit "A".

11. The tape was played in the context of the FRED WILLIAMS' news-talk show which addressed the issue of the highly publicized teacher dispute and contract negotiations between the Wyoming Valley West School District and Wyoming Valley West Teachers' Union.

12. Contract negotiations between the Teachers' Union and the Wyoming Valley West School District had received at that time and continued to receive thereafter a high degree of publicity in both the electronic and print media.

* * * *

Respectfully submitted,

ROSENN, JENKINS & GREENWALD, L.L.P.

By: /s/ James C. Oschal, Esq.
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WILK RADIO, FREDERICK W. VOPPER,
a/k/a FRED WILLIAMS, and
LACKAZERNE, INC., d/b/a WGBI RADIO

[Letterhead Imprints Omitted]

TONY KANE AND GLORIA BARTNICKI
CELLULAR PHONE CONVERSATION

KANE-...So there's no...No problem. We're gonna...Tomorrow we're passing out information...You know that thing about moving the, the, things up? The, uh, the exams up?

BARTNICKI- Yes.

KANE- That we can have a strike almost any time

BARTNICKI- Uh huh.

KANE- Boy (INDECIPHERABLE), That hit uh, Norm and them today. They found...

BARTNICKI- (INTERRUPTS) Well tell me...Why, what happened?

KANE- Well, they, they were called, they, they, uh, they uh, were calling uh Harrisburg in the afternoon and they thought we had a leak...(laughs) uh...A speaker in the office. But I says no, this thing was decided by Gloria and myself...(INDECIPHERABLE)...Gonna notify the teachers. It was just a coincidence. You were right on target. They can move the date, and they might want to try to move the date.

BARTNICKI- See, when I talked to him today...

KANE- Yeh.

BARTNICKI- He did not say it but...He left me with that impression.

KANE- (INTERRUPTS) Ah, you were, you had the right intuition. But at this point in time, when I talked to him... We may have to set a strike date uh, ah, early next week.

BARTNICKI- Yeh, we might Tony.

KANE- So I'll be in close contact with you tomorrow.

BARTNICKI- Okay.

KANE- Ah...I'll, I'll call you at home or call the office and tell them to call er (INDECIPHERABLE) meet you right away.

BARTNICKI- Yeh, definitely.

KANE- But I'll find out what I hear tonight. Now (PAUSE) give me your number at home again because you did not give it to me.

BARTNICKI- (INDECIPHERABLE)...Five, five

KANE- You're at home, are you not?

BARTNICKI- No I'm in my car right now.

KANE- Oh, okay...But

BARTNICKI- ...Going back to the office for fifteen...About five minutes and then I'm going home.

KANE- Well now, give me your car...and home...

BARTNICKI- Okay. The car...

KANE- (INTERRUPTS) Now wait a minute. Gloria...

BARTNICKI- The car...

KANE- ...Car, right?

BARTNICKI- Six, five, zero...

KANE- Six, five...

(WHOEVER TAPED CONVERSATION WARPED THE PHONE NUMBER SO IT IS NOT HEARD)

BARTNICKI- Zero

KANE- One, zero. Okay home...

BARTNICKI- Six, five, five, one, six...

(TAPE IS ONCE AGAIN WARPED DURING PHONE NUMBER SO IT IS INDECIPHERABLE)

KANE- Six, five, five...

(TAPE WARPED HERE ONCE AGAIN TO PROTECT THE PHONE NUMBER)

KANE- The car is six, five...

(TAPE WARPED AGAIN, NUMBER INDECIPHERABLE)

KANE- Okay, what I'll do is, I (MUMBLES)... They, according to this reporter, they're supposed to get in touch with me. But my answers (?), I got in touch with, the school got in touch with me, but I'm hoping to hear from Mr. Paley.

BARTNICKI- Yeh, now listen. Let me ask you something. (PAUSE) Are you guessing that they called the Department of Education...

KANE- No (QUIETLY), between you and me, this is very confidential...

BARTNICKI- Yes.

KANE- Andy Marko (SP?) told me that they called this afternoon...

BARTNICKI- Yes.

KANE- And the department said yes, they could move the date of the exam...

BARTNICKI- Yeh.

KANE- Now that had nothing to do with how short school is gonna be.

BARTNICKI- That's right.

KANE- Okay?

BARTNICKI- Uh huh.

KANE- And when they did that...

BARTNICKI- (INTERRUPTS) Even if they take the exams tomorrow, Tony, the kids still have to have a hundred and eighty days.

KANE- They still have to have a hundred and eighty days, but I don't think they can have exams tomorrow. I don't think the teachers would go through with it.

BARTNICKI- No.

KANE- They haven't prepared the kids for it. They have to tell the kids to study.

BARTNICKI- Yes. That's right.

KANE- ...Right?

BARTNICKI- That's right.

KANE- At least get them going for it.

BARTNICKI- Yeh...

KANE- That would be grossly unfair too...So what I'm saying, they thought that there was some kind of a leak, because at a quarter of three the high school principal called and said there was a rumor going around that the teachers were talking about that, that, that (STUTTERS)... Test date being moved back.

BARTNICKI- Oh, really?

KANE- And it was just that we had, I had started that this morning after talking to you...

BARTNICKI- Oh, okay.

KANE- Your suspicions, I said to everybody, pass the word that we never know, but the principals were meeting this morning and they may be trying to move back.

BARTNICKI- Yeh.

KANE- Which they were not!

BARTNICKI- Yeh.

KANE- They, they're meeting on Friday to discuss that ...From what I understand.

BARTNICKI- Uh huh.

KANE- You understand? It was just a coincidence.

BARTNICKI- So, if they meet on Friday, Tony, the earliest they can tell the kids is Monday.

KANE- (INDECIPHERABLE)...They're, they're gonna have it then.

BARTNICKI- Yeh...Exactly.

KANE- But when...Monday there's no school.

BARTNICKI- Oh, that's right. (PAUSE) So Tuesday...

KANE- They'd have to tell the kids they're gonna have a test on Tuesday.

BARTNICKI- Yeh.

KANE- (PAUSE) Right?

BARTNICKI- If that happens, then we strike them Tuesday, Tony.

KANE- Right...That's...

BARTNICKI- Yeh.

KANE- Uh, I guess we have to wait until they make the next move.

BARTNICKI- Yeh. Then we strike them Tuesday.

KANE- Right.

KANE- All right...Okay. That will be the way, whether they're...

BARTNICKI- (UNDECIPHERABLE FIRST NAME) Fumanti told me that Norm Namey called him today.

KANE- Yeh.

BARTNICKI- He was beside himself.

KANE- Yeh, well I feel sorry for Norm.

BARTNICKI- I know. I do, too.

KANE- Because I don't think this should be.

BARTNICKI- No.

KANE- I don't think this should be...But this is again...It's, it's (UNDECIPHERABLE)...If they're not gonna move for three percent, we're gonna have to go to their, their homes...To blow off their front porches, we'll have to do some work on some of those guys. (PAUSES). Really, uh, really and truthfully because this is, you know, this is bad news. (UNDECIPHERABLE) The part that bothers me, they could still have kept to their three percent, but they're again negotiating in the paper. This newspaper report knew it was three percent. What they should have said "We'll meet, we'll meet and discuss this." You don't discuss the items in public.

BARTNICKI- No.

KANE- You don't discuss this in public...Particularly with the press.

BARTNICKI- Exactly...Well, but now, uh, all rules are off and they'll discuss anything they want.

KANE- Yeh, well if the rules are off, the rules are off for us, too.

BARTNICKI- Exactly.

KANE- The rules are off for us, too. So, if you want to get beat over the head, too, get beat over the head.

BARTNICKI- Yes.

KANE- But what they should have done is said-Look, we'll meet tomorrow and see if we can't resolve...But you don't discuss your position openly...

BARTNICKI- No.

KANE- You say no...Buy you know they're saying no and they, the taxpayers, love it.

BARTNICKI- Yes.

KANE- See? Under no circumstances, people with enough sense to say (UNDECIPHERABLE)...these idiots

BARTNICKI- I know.

KANE- It's not what they're to do.

BARTNICKI. That's right.

KANE- You see the media goes and he tries to talk to them in private, but they're doing everything in public...So we have to talk about the humming that took place at the school.

BARTNICKI. Yes.

KANE- (UNDECIPHERABLE) You know we're gonna buy him a song sheet.

BARTNICKI- Yes.

KANE- You know...And we can put words to his songs the next time instead of humming. Put some nice words to it.

BARTNICKI- That's, that's how seriously he took this.

KANE- That's right. And that's how serious the whole question might be...They're, they're, they're nitwits. But, I'll tell you I think there, there's eight or nine of them.

BARTNICKI- Oh yeah!

KANE- That's the sad part.

BARTNICKI- Oh yeah...

KANE- See...

BARTNICKI- And you know, Tony, I'm gonna say this to you. I don't think George Dervinis is assertive enough with them. I just don't.

KANE- No... Well, well, I don't think he...

BARTNICKI- He's too nice a guy, Tony.

KANE- Yeh, I think he tells them, but then they say well the hell with you...You've got the rabble rousers, like Jim Burns...See if that were Vivian he'd fight with them.

BARTNICKI- Yeh.

KANE- See they wouldn't push him over...He'd fight with them, he'd argue with them.

BARTNICKI- Yeh, yeh.

KANE- But I don't think the others have the energy to do it...

BARTNICKI- No. No.

KANE- Yeh...So that's...

BARTNICKI- Okay kiddo...

KANE- (UNDECIPHERABLE) If I hear from the school tonight...I'll definitely call you.

BARTNICKI- Alright.

KANE- I'll definitely call ya..Now maybe, I won't...

BARTNICKI- Okay.

KANE- But I think I might hear from someone.

BARTNICKI- Alright.

KANE- Okee-Doke.

BARTNICKI- Okay

KANE- Right.

BARTNICKI- Bye.

KANE- Bye-bye.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Case No. 3:94-CV-01201
Judge Edwin M. Kosik

GLORIA BARTNICKI and
ANTHONY F. KANE, JR.,

Plaintiffs

v.

FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZERNE, INC., d/b/a WGBI RADIO, JANE DOE, and JOHN DOE, and JACK YOCUM,

Defendants

STATEMENT OF MATERIAL FACTS
AS TO WHICH DEFENDANT JACK YOCUM
CONTENDS THERE
IS NO GENUINE ISSUE TO BE TRIED

* * * *

11. In addition to WILK Radio, the contents of the conversation between Plaintiffs was aired on several other media outlets throughout the area.

12. In addition to electronic media airing the contents of the communication between plaintiffs, various newspapers and print media also diseminated the contents in transcript form.

* * * *

14. Plaintiffs have admitted that they have sustained no actual damages as a result of the conduct of any of the defendants and have withdrawn their claims for actual damages.

These facts are supported by materials which are already on file with the Court.

In addition, other materials in support of the above Statement will be filed with the Court within the time provided by the Rules.

Respectfully submitted,

/s/ Charles R. Gerow, Esquire
CHARLES R. GEROW, ESQUIRE
Attorney for Jack Yocum
Attorney I.D. #32888
4725 Charles Road
Mechanicsburg, PA 17055
(717) 975-3536

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Case No. 3:94-CV-01201
(Judge Kosik)

GLORIA BARTNICKI and
ANTHONY F. KANE, JR.,

Plaintiffs

v.

FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZERNE, INC., d/b/a WGBI RADIO, JANE DOE and JOHN DOE, AND JACK YOCUM,

Defendants

MEDIA DEFENDANTS' ANSWER TO DEFENDANT'S, JACK YOCUM, STATEMENT OF MATERIAL FACTS

The Defendants, FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, and LACKAZERNE, INC., d/b/a WGBI RADIO (referred to collectively as the "MEDIA DEFENDANTS"), by and through their attorneys, Rosenn, Jenkins & Greenwald, L.L.P., hereby submit the instant Answer to the Statement of Material Facts submitted by the Defendant, JACK YOCUM, in support of his Motion for Summary Judgment and aver as follows:

* * * *

11. ADMITTED.

12. ADMITTED.

* * * *

14. ADMITTED.

Respectfully submitted,

ROSENN, JENKINS &
GREENWALD, L.L.P.

BY: /s/ Donald H. Brobst,
DONALD H. BROBST, ESQ.

BY: /s/ James C. Oschal
JAMES C. OSCHAL, ESQ.
15 South Franklin Street
Wilkes-Barre, PA 18711-0075
(717) 826-5600
Attorneys for Defendants,
KEYMARKET OF NEPA, INC.,
d/b/a WILK RADIO, FREDERICK
W. VOPPER, a/k/a FRED
WILLIAMS, and LACKAZERNE,
INC., d/b/a WGBI RADIO

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Case No. 3: CV-94-1201

GLORIA BARTNICKI and ANTHONY F. KANE, JR.,
Plaintiffs

vs.

FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZERNE, INC., d/b/a WGBI RADIO, JANE DOE and JOHN DOE, and JACK YOCUM,
Defendants

CIVIL ACTION
JURY TRIAL DEMANDED
(JUDGE KOSIK)

AFFIDAVIT

JACK YOCUM, being duly sworn according to law, does depose and say the following relative to the above captioned action:

1. That at the time I received the tape which is the subject of this lawsuit and all times subsequent thereto, I was completely unaware of the individual or individuals who made the tape;

2. I was at the time of the receipt of the tape and all times subsequent thereto without any personal knowledge that the conversation was a telephone conversation;

3. I have no knowledge that the tape was made illegally or surrepticiously and I have no knowledge as to the manner in which the tape was made or for what purpose it was made;

4. I have no knowledge that the recording of the conversation was intentional. I have reason to believe based upon information I have received during Discovery in this case, by way of deposition testimony and other evidence, that this tape was inadvertently made and was a random act.

5. I was, at the time that I received the tape, totally unaware of any of the provisions of the State or Federal Statutes upon which Plaintiffs' claim is based.

6. I made no effort to investigate the source of the tape, the legality of the tape and took the tape the very next morning to a radio station for the purpose of having same reviewed by an investigative reporter.

7. Based upon prior experience with the police, I did not believe that the police would act upon the tape without some overt act having been done, i.e. an actual explosion, bombing or other act of violence.

8. I had a real and extreme concern for the safety of the school board members and/or others and reasonably believed that by having the tape investigated and publicized this would prevent a violent act, i.e. bombings, since other bombing threats had been made to school board members. Additionally, I was aware that Annette Palutis, PSEA President, had advocated breaking the law if it was necessary to secure a contract settlement and, additionally, personal threats had been made against me.

Sworn to and subscribed
before me this 30th
day of October, 1995.

/s/ Jane N. Artis
JANE N. ARTIS

/s/ Jack Yokum
JACK YOKUM

[Seal Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Case No. 3:94-CV-01201
(Judge Kosik)

GLORIA BARTNICKI and
ANTHONY F. KANE, JR.,
Plaintiffs

v.

FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZERNE, INC., d/b/a WGBI RADIO, JANE DOE and JOHN DOE, and JACK YOCUM,
Defendants

PLAINTIFFS' RESPONSE TO THE STATEMENT OF UNDISPUTED MATERIAL FACTS OF FREDERICK W. VOPPER, KEYMARKET OF NEPA, INC. and LACKAZERNE, INC.

The Plaintiffs, Gloria Bartnicki and Anthony F. Kane, Jr., by and through their counsel Koff, Wendolowski, Ferguson & Mangan, P.C., hereby respond to the Statement of Undisputed Material Facts in connection with the Motion for Summary Judgment asserted by Frederick W. Vopper, Keymarket of NEPA, Inc. and Lackazerne, Inc., as follows:

1. Admitted in part and denied in part. It is admitted that in or about May, 1993 Bartnicki did telephone Kane using her cellular telephone. Part of that conversation was intercepted and recorded and a transcript of the recording has been submitted as Exhibit 1 in support of Plaintiffs' Motion for Summary Judgment. Kane's statement is taken out of the context of the entire

conversation. Kane's reference to the need "to blow off the front porches of the school directors" in order to get the school directors to agree to the teachers' demands is purely rhetoric and a figure of speech.

2. Admitted.

3. Admitted.

* * * *

5. Admitted.

6. Admitted in part and denied in part. While it is admitted that Yocum did deliver a copy of the tape to WILK, Plaintiffs are without sufficient information and knowledge so as to determine the truth of the rest of the statement in Paragraph 6 and therefore the rest of the statement is denied and strict proof of same is demanded at time of trial.

7. Admitted.

8. Admitted. While it is admitted that other members of the media played portions of the tape and that newspapers quoted from the tape in their news stories, this occurred in response to Mr. Vopper's playing of the tape on his show.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

* * * *

Respectfully submitted,

KOFF, WENDOLOWSKI, FERGUSON
& MANGAN, P.C.

By: /s/ Raymond P. Wendolowski,
RAYMOND P. WENDOLOWSKI, ESQUIRE

By: /s/ Cynthia R. Vullo,
CYNTHIA R. VULLO, ESQUIRE
22 East Union Street-Suite 115
Wilkes-Barre, PA 18701-2721
(717) 822-5600
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

Case No. 3:94-CV-01201
(Judge Kosik)

GLORIA BARTNICKI and
ANTHONY F. KANE, JR.,

Plaintiffs

v.

FREDERICK W, VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZERNE, INC., d/b/a WGBI RADIO, JANE DOE and JOHN DOE, and JACK YOCUM,

Defendants

PLAINTIFFS' RESPONSE TO THE STATEMENT OF MATERIAL FACTS AS TO WHICH DEFENDANT, JACK YOCUM, CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED

* * * *

11. Admitted. It is admitted that other media outlets played portions of the tape, however, this occurred in response to Mr. Vopper's playing of the tape on his show.

12. Admitted in part and denied in part. It is admitted that newspapers printed portions of the tape, however, this occurred in response to Mr. Vopper's playing of the tape on his show. Plaintiffs are without sufficient information or knowledge to admit or deny that the contents of the tape were disseminated in transcript form in the print media.

* * * *

14. Denied as stated. Plaintiffs stipulated to withdrawing their claim for actual damages, but have not admitted that they have no such damages.

Respectfully submitted,

KOFF, WENDOLOWSKI, FERGUSON
& MANGAN, P.C.

By: /s/ Raymond P. Wendolowski,
RAYMOND P. WENDOLOWSKI, ESQUIRE

By: /s/ Cynthia R. Vullo,
CYNTHIA R. VULLO, ESQUIRE
22 East Union Street-Suite 115
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(717) 822-5600
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Case No. 3:94-CV.-01201
Judge Edwin M. Kosick

GLORIA BARTNICKI AND ANTHONY F. KANE, JR.,
Plaintiffs

v.

FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZERNE, INC., d/b/a WGBI RADIO, JANE DOE, AND JOHN DOE, AND JACK YOCUM,
Defendants

DEFENDANT JACK YOCUM'S ANSWER TO MEDIA DEFENDANTS' STATEMENT OF MATERIAL FACTS

The Defendant, Jack Yocum, by and through his attorney, Charles R. Gerow, Esquire, hereby submits the instant Answer to the Statement of Material Facts submitted by the Media Defendants', in support of his Motion for Summary Judgment and aver as follows:

1. ADMITTED.

2. ADMITTED.

3. ADMITTED.

* * * *

5. ADMITTED.

6. ADMITTED.

7. ADMITTED.

8. ADMITTED.

9. ADMITTED.

10. ADMITTED.

11. ADMITTED.

12. ADMITTED.

* * * *

Respectfully submitted,

By:/s/ Charles R. Gerow
CHARLES R. GEROW, ESQ.

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

USDCMDPA Case No. 3 :94CV01201
(Judge Kosik)

GLORIA BARTNICKI and
ANTHONY F. KANE, JR.,

Plaintiffs

vs.

FEDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZERNE, INC., d/b/a WGBI RADIO, and JACK YOCUM,

Defendants

PETITION FOR PERMISSION TO APPEAL

FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO. and LACKAZERNE, INC., d/b/a WGBI RADIO, the Media Defendants, by and through their attorneys, ROSENN, JENKINS & GREENWALD, L.L.P., hereby petition this Court pursuant to 28 U.S.C. § 1292(b) and Rule 5 of the Federal Rules of Appellate Procedure for permission to appeal pursuant to the Certification Order entered on January 7, 1998 by the United States District Court for the Middle District of Pennsylvania, a copy of which Order, together with the Opinions related thereto dated June 17, 1996 and November 8, 1996, is annexed to this Petition as Exhibit "A". The Defendants Petition to appeal the Memorandum and Order dated June 14, 1996 denying the Motion for Summary Judgment of the Defendants and the Memorandum and Order of November 8, 1996 which denied the Defendants' Motion to Reconsider the June 17, 1996 decision. Copies of the

aforesaid Court Memoranda and Orders are annexed to this Petition as Exhibit "A". .

1. The facts necessary to an understanding of the controlling question of law determined by the District Court's Opinions and Orders are as follows:

(a) Plaintiff, GLORIA BARTNICKI, is employed by the Pennsylvania State Education Association (PSEA) and was assigned as a negotiator on behalf of the Teachers' Union in a dispute between the Teachers' Union and Wyoming Valley West School District.

(b) Plaintiff, ANTHONY F. KANE, JR., was a teacher at Wyoming Valley West High School and President of the PSEA's Local Teachers' Union representing the teachers of the School District.

(c) During the pendency of the negotiations between the Teachers' Union and the School Board, a citizens group, Wyoming Valley West Taxpayers Association ("Association") was formed for the purpose of opposing the Teachers' Union's proposals. Defendant, JACK YOCUM, was President of the Association.

(d) The School District-Teachers' Union contract negotiations received extensive local media coverage.

(e) In May of 1993, Plaintiffs, BARTNICKI and KANE, had a telephone conversation via a transmission from Plaintiff BARTNICKI's cellular car phone and Plaintiff KANE's conventional telephone line in which the two of them discussed the Teachers' Union's demands and the negotiations.

(f) During that telephone conversation, KANE stated to BARTNICKI the following: "If they're [the School Directors] not going to move for 3%, we're gonna have to go to their homes. . . . to blow off their front porches, we'll have to do some work on some of those guys . . .".

(g) The aforesaid conversation, including the aforesaid statement by KANE to BARTNICKI, was intercepted and recorded by an unidentified party.

(h) A cassette containing a recording of this conversation was placed in Defendant YOCUM's mail box without any markings identifying the depositing party or the person who made the recording.

(i) Defendant YOCUM played the tape and recognized the voices of those belonging to the Plaintiffs.

(j) Defendant YOCUM delivered to Defendant VOPPER of Defendant WILK's Radio Station the tape recording.

(k) Mr. VOPPER, who has a radio news/public affairs talk program using the name FRED WILLIAMS, aired the tape during his program several times, thereby causing it to be broadcast over WILK RADIO, which is owned by KEYMARKET OF NEPA, and said program was simulcast over WGBI AM, which is owned by LACKAZERNE, INC.

(l) None of the Defendants played any role whatsoever with respect to the interception or taping of the cellular telephone communication between the Plaintiffs.

(m) The Plaintiffs seek to impose liability on the Media Defendants solely for playing the newsworthy tape during the radio news/public affairs talk show of Defendant FRED WILLIAMS on WILK RADIO and WGBI/AM RADIO.

(n) The Plaintiffs seek to impose liability on Defendant YOCUM solely for delivering the tape to the media.

(o) It is unknown who intercepted or recorded the conversation and delivered the tape to Defendant YOCUM.

* * * *

ROSENN, JENKINS & GREENWALD, L.L.P.

By: /s/ Donald H. Brobst,
DONALD H. BROBST, ESQUIRE
Attorney I.D. No. 17833
15 South Franklin Street
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(717) 826-5655

Attorneys for Defendants,
FREDERICK W. VOPPER, a/k/a FRED WILLLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, and LACKAZERNE, INC., d/b/a WGBI RADIO

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

USDCMDPA Case No. 3:94CV01201
JUDGE KOSIK

GLORIA BARTNICKI and
ANTHONY F. KANE, JR.,
Plaintiffs

vs.

FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZERNE, INC., d/b/a WGBI RADIO, JANE DOE and JOHN DOE, and JACK YOCUM,
Defendants

DEFENDANT JACK YOCUM'S ANSWER TO PETITION FOR PERMISSION TO APPEAL

Individual Defendant, JACK YOCUM, by and through his counsel, FRANK J. ARITZ, ESQUIRE hereby files this Answer pursuant to Federal Rules of Appellate Procedure 5(b) and states as follows;

1. Defendant, YOCUM, concurs in the Media Defendants' Petition for permission to appeal . . . .

Respectfully submitted,

/s/ Frank J. Aritz,
FRANK J. ARITZ, ESQUIRE
Counsel for Defendant, YOCUM
23 West Walnut Street
Kingston, PA 18704
(717) 288-9751
Atty. I.D. No. 27779

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

USDCMDPA Case No. 3:94CV01201
(Judge Kosik)

GLORIA BARTNICKI and
ANTHONY F. KANE, JR.,
Plaintiffs

v.

FREDERICK W. VOPPER, a/k/a FRED WILLIAMS, KEYMARKET OF NEPA, INC., d/b/a WILK RADIO, LACKAZERNE, INC., d/b/a WGBI RADIO, JANE DOE and JOHN DOE, and JACK YOCUM,
Defendants

ANSWER OF PLAINTIFFS, GLORIA BARTNICKI and ANTHONY F. KANE, JR. TO PETITION FOR PERMISSION TO APPEAL

Gloria Bartnicki ("Bartnicki") and Anthony F. Kane, Jr., ("Kane"), Plaintiffs, by and through their attorneys, Koff, Wendolowski, Ferguson & Mangan, P.C. hereby respond to the Petition to Permission to Appeal of the Media Defendants and state as follows:

1a. through 1m. Admitted.

1n. Admitted in part and denied in part. It is admitted that the Plaintiffs seek to impose liability on the Defendant Yocum for delivering the tape to the Media Defendants. By way of further answer, Plaintiffs also seek to impose liability upon Yocum for delivery of the tape to other, non-media, entities who are not parties to this litigation.

1o. Admitted.

* * * *

Respectfully submitted,

KOFF, WENDOLOWSKI, FERGUSON
& MANGAN, P.C.

By: /s/ Raymond P. Wendolowski, Esquire
RAYMOND P. WENDOLOWSKI, ESQUIRE
Attorney I.D. No. 40935
22 East Union Street, Suite 115
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(717) 822-5600

Attorneys for Plaintiffs, Gloria Bartnicki and
Anthony F. Kane, Jr.

TRANSCRIPTS OF DEPOSITIONS TAKEN IN *BARTNICKI V. VOPPER*, NO. 3:CV-94-1201 (M.D. PA.)

Deposition Testimony of Gerald Getz, December 29, 1994

[9] By Mr. Wendolowski [Attorney for Plaintiffs]:

* * * *

Q. And you are Vice President and General Manager of both WILK and WGBI?

A. Correct.

* * * *

[14]

* * * *

Q. Did you have discussions with him at that time about what you were looking for in a radio talk show host; what type of air personality you wanted; what type of show you wanted presented?

A. I mean, I probably did. I mean, I'm sure that was brought up. And I don't know exact questions I would have asked him at the time but basically someone who'd come in and be involved in local community public concerns and we wanted a—basically a sort of a local Rush Limbaugh show from—at that time it was nine to noon, for three hours.

* * * *

[38]

* * * *

Q. So it would be fair to say that from your company's perspective the way you look at The Fred [39] Williams Show, the ratings are okay?

A. Yeah, they're okay and it's basically fulfilling our community service public needs, which we always like to do

in our career, because we get—our license renewal comes up quite often and what it does, it provides a real public interest program, which keeps us and fulfills a lot of federal, you know, guidelines that we have to be providing that kind of service to the public. And it does that very much because of the content of the show. So that's more of our concern than anything.

* * * *

Deposition Testimony of Defendant Frederick W. Vopper, December 29, 1994

[7] By Mr. Wendolowski [Attorney for Plaintiffs]:

* * * *

Q. Mr. Vopper, can you briefly describe for us your educational background?

A. I went to the 11th grade. I left school to help my parents in their business. Then shortly thereafter, I entered the United States Navy. I became a radio communications operator. Ended up my career at the naval—Norfolk Naval Base in Norfolk, Virginia. And that's how I got into broadcasting and writing and being in the news department, covering hurricanes, news events of that nature. And then I went to their sister stations in Petersburg, Virginia; gravitated to Pennsylvania.

I went to Philadelphia WCAU for a period of years and then I stayed in Lebanon, Pennsylvania for about ten years and there was an interim job in Harrisburg—sister station to Williamsport, Virginia—Williamsport, Pennsylvania, and then that's when Keymarket approached me to come to Wilkes-Barre in about 1990, and I've been there ever since.

* * * *

[8]

* * * *

Have you ever been involved in any disputes over taped conversations before?

A. No.

* * * *

[17]

* * * *

Q. Let me ask you first. When did you first [18] get a copy of the tape?

A. To the best of my recollection, between April and May of '93.

Q. And where did you get the tape from, the copy that you received?

A. I got it from Jack Yocum who delivered it to the radio station.

Q. Let me ask you another question. When is the first time you heard the tape?

A. I didn't listen to the tape immediately and I can't tell you precisely whether it was a week, two weeks or when I actually listened to this tape. I don't remember.

Q. You had never heard it before Mr. Yocum gave you a copy of it?

A. That's correct.

Q. Did you know it existed before Mr. Yocum dropped the copy off at the station?

A. No, I did not.

Q. Did you have any conversation with Mr. Yocum at the tine he gave you the tape?

A. Yeah. I asked him where he got it.

Q. And what did he say?

A. He said he found it in his mailbox.

Q. Any other discussion with him at that time?

[19] A. No. I just—I was kind of curious because it was—I think the whole tape is only about, I guess, nine minutes or ten minutes in length and I was kind of curious. He found it in his mailbox. I said, well, do you know who did

this, who recorded it? He says, I don't know. So that basically was it.

Q. Did you have any discussion as to who was on the tape?

A. He told me who he thought was on the tape.

Q. And what did he tell you?

A. Ms. Bartnicki and Mr. Kane.

Q. Did he tell you how he surmised that it was Ms. Bartnicki and Mr. Kane?

A. He said he recognized Mr. Kane's voice.

Q. Did he tell you anything about this being a cellular conversation?

A. He mentioned it was a cellular phone conversation.

Q. Did he tell you how he knew that?

A. No.

Q. Did you ever find out from anyone else how—first of all, do you know whether or not it was a cellular conversation?

A. I think by listening to the content of it, Ms. Bartnicki said she was driving her car at the [20] time. So it has to be a cellular phone.

Q. Have you had any discussions with anyone else about whether or not it was a cellular conversation, other than your lawyer?

A. No.

Q. Was anyone else present when you had this initial discussion with Mr. Yocum when he gave you the tape?

A. No, I think he was in my office for about ten minutes at the most. I don't think anybody was there.

Q. Who is Mr. Yocum, by the way?

A. I think he's an independent contractor. He like builds homes and refurbishes homes and puts in new bathrooms and stuff like that. He's in construction, yeah.

Q. Does he have any connection to the dispute that was going on in the Wyoming Valley West School District?

A. I don't know whether he's still the--with regards to the Taxpayer Association, but he's very involved in that, I know. Whether he's still the president of Wyoming Valley West, I don't know, but he's very active in taxpayer issues.

Q. Now, you played the tape for the first time [21] you think maybe a week later. Was anyone else present when you played it the first time?

A. I think Nancy Kman, our news and program director, was in on this. I said, Nancy, listen to this, and I think she was there. But no one else that I could think of.

Q. Okay. And when's the next time that you played the tape?

A. I don't remember. It was pretty close to probably—I think it was just put in a drawer for a while. We didn't do anything with it. And then in the month of September, we started to be concerned about maybe this is really a legitimate news item that should be looked at.

* * * *

[24]

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Q. Did you ever find out how the tape was made, how the original interception of this conversation took place?

A. I don't know how it was taped. I hear—Jack told me, only hearsay what he would know, that he heard from

somebody who told him that somebody was listening to a Bearcat scanner-type device where you could record conversations if you were zeroed in on the specific frequency of a telephone. And they heard this conversation, as the story goes, and somebody pressed down a button on a record unit that activated this tape with the conversation of these two people.

MR. BROBST: Can we have a time frame on that?

Q. When was this conversation with Yocum, the one you're just relating to me now?

A. This was probably a day or two after he gave me that tape, or maybe a week went by, and I said, Can you tell me more about it? He says, I don't know anything. I don't know who did it. He says, but I heard that somebody got it off some kind of a Bearcat scanner.

[25] Q. Did he say who he heard that from?

A. No.

Q. You didn't ask him?

A. He didn't know. I says, can you tell me who did this? He says, I don't know, this is just a rumor that I heard.

* * * *

[26]

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Q Did you play it for anybody else?

A. No, I did not.

Q. Did you ever have the tape copied?

A. No.

Q. Did you ever disseminate copies of the tape to anybody?

A. No.

* * * *

[44]

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Q. Is there any reason why you didn't play the tape until September of '93 when you received it in April or May?

A. Not really, no. It was just something that [45] we listened to and somehow it got in a drawer, because I knew the ramifications of doing something that might be illegal. And it just stayed there and then we resurrected it and listened to it carefully again and Nancy and I spoke about it and talked to Gerald. I said, I think we ought to do this; I think we ought to broadcast this, but first, let's see if it's legal.

Q. And do you recall what was going on in the course of the dispute between the teachers and the school board at this time?

A. No. I don't, because it was such an ongoing thing. It was really very bad relations between the school board and the teachers union.

Q. Did you have any conversations with Mr. Yocum or anyone else at the Taxpayers' Association in September of '93 about playing the tape? Did they call you and ask you to play the tape?

A. No, as a matter of fact he didn't. He just gave it to me. He never persuaded me to play it; asked me to play it. He just gave it to me in April or May of '93. Never said, when you going to play the tape? Never said, what's going on?

Q. Before you played the tape. did you call him and alert him to the fact that you were about to play it?

[46] A. No. No one knew until the morning we played it, and that was only the audience.

* * * *

Deposition Testimony of Plaintiff Anthony Kane, Jr., December 30, 1994

[11] By Mr. Brobst [Attorney for Defendant Frederick W. Vopper, et al.]:

* * * *

Q. Is the union that represents the teachers at Wyoming Valley West the PSEA?

A. Yes.

Q. Are you or have you been in the past an officer of that union?

A. Yes.

Q. Okay. Can you tell me what positions you held and when that was?

A. Well, in Wyoming Valley West, I've been President and I became President in 1968, and I continue to serve in that capacity.

* * * *

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Q. How would you describe the contract negotiations that took place between you and the School Board negotiators?

A. Extremely difficult.

Q. Why was it difficult?

A. Well, we were dealing with a party that whenever we said anything, it was reported to the press—very very difficult to operate under. We [18] couldn't operate under that. We couldn't say any—I don't know what you could say because it was being quoted in the paper. Conversation was being quoted in the paper. All our conversations, if we suggested

something to someone, it was repeated. I mean, there was no confidentiality; no semblance of respect on the part of the Board to at least understand what was going on. That's what made it difficult, extremely difficult. I don't know how you operate with that in effect.

Q. So the fact that everything was getting reported in the newspapers and the media made it difficult to conduct these negotiation; is that correct?

A. Yes.

Q. Would it be fair to say that this is a labor dispute that got a lot of media attention?

MR. WENDOLOWSKI: Object as to form. You can answer.

A. Yes, I would say yes. Very much so.

Q. So there was a lot of stories about it in the newspapers and on the television?

MR. WENDOLOWSKI: Same objection. You can answer Tony.

A. Yes.

[19] Q. Were there any work stoppages, any strikes during the course of these negotiations by the teachers?

A. There was a two-day strike that occurred in compliance with the new law which is called Act 88. There was a new bargain law in the state of Pennsylvania. It took the place of Act 195, basic part of Act 195. And it was a short—like the days were made up, nothing was lost, sort of a—we had to do this in order to proceed to the next step in the law. We were forced into it, in a sense.

Q. So it was just one two-day work stoppage?

A. Yes, that's right. It was a Friday and a Monday.

Q. And when did that occur?

A. That occurred in June.

Q. Of what year?

A. '93.

Q. '93?

A. Yeah.

Q. You indicated there was a lot of communication by the School Board representatives to the media, is that correct?

A. Yes.

Q. And what was your response to that? Did you [20] then likewise communicate to the media in order to get your side in the newspaper?

A. We attempted to get the proper perspective of the thing and we did get—whenever the press wanted to—our side of the picture into the thing.

Q. And how did you do that?

A. Well, we—many times the newspapers would call us. The reporters would call us to find out, did this really take place? And we'd say yes then try to explain it to the press. And there were some articles that tried to say that negotiations were being conducted in a fishbowl-type of atmosphere. But that's the only way that we tried to counteract it.

Q. Was there a lot of citizen involvement with respect to these negotiations?

A. Not directly to me, but a number of people went to the School Board meetings and were encouraged by one or two particular School Board members to come up and speak. They indicated that right from the stage. And there were a number of people that came to School Board meetings complaining about the negotiations.

Q. Was there any kind of an official taxpayers or citizens group that was, in effect, opposing your position?

[21] Mr. WENDOLOWSKI: Official in the sense of government sanctioned or organized?

MR. BROBST: Just organized.

A. Yes, I would say there was a group that would form on the West Side in Wyoming Valley West.

Q. And did they have a name?

A. I think they called themselves the Taxpayers Association.

Q. And what kind of activities were they involved in during the tine that these negotiations were taking place?

A. Well, one of the things they attempted to do was get petitions from the people in the district and they got as many names as they could from people and—opposing the proposal of the teachers—what they had read in the paper. They had never seen our proposal, but what was said in the papers.

* * * *

Q. I show you what's been marked as Deposition Exhibit 1, which is a newspaper article written by Fred Ney for the Citizens' Voice which appeared [22] Tuesday October 5th, 1993. Do you remember seeing that article in the paper?

A. Yes, or what appeared to be an article similar to this.

Q. And the headline on it says. "The Chasm Widens—WVW nixes arbitrator's recommendations; teachers OK it." What was that about?

A. Well, according to the law, an arbitrator was called in to try to bring the parties together. And he—Mr. Sobrick was the arbitrator from Pittsburgh—came in two or three occasions and met with us and met with the Board in private

and got information from both parties and then wrote up what he thought was a settlement that would be agreeable to both parties. And that was presented to the Board and it was presented to us and we accepted it. It wasn't everything that we wanted but it was a means of ending the conflict. And it was presented to the Board and the Board rejected it. And that's where it ended; that was the end of it.

Q. So the attempt at arbitration failed, is that correct?

A. Yes, that attempt then, yes.

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[23]

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Q. Did you periodically, yourself personally, talk to newspaper reporters to give then information about the union's perspective on this matter?

A. Yes at various times, not constantly. I think that whenever I felt we tried to get the answer [24] and if there was anything incorrect. Whether they put it in or not was another.

Q. Would it be fair to say that over this 22-month period that started in January of 1992, that this dispute would—there would be times when there was more going on that would be—more activity in terms of trying to get it resolved than at other times? There were periods of activity and there were periods of inactivity?

A. Yeah, I suppose you could say that. The dynamics, the thing changed from day to day, yes.

Q. So would it be fair to say that the news coverage would—it wasn't every day during that 22-month period that there was something in the newspaper, but there would be, periodically. over that 22-month period as things occurred relating to the dispute, is that correct?

A. Yes, it was fairly regular though, fairly regular.

Q. Okay. So this got almost constant publicity during that 22-month period?

MR. WENDOLOWSKI: Object to the form. You can answer.

A. Yeah, I would say it.

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[27]

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Q. And when was the next thing that happened [28] with respect to that tape in terms of your involvement?

A. Well, that night I came home, there was another call from another newspaper. I came home from the meeting

Q. Which newspaper?

A. Citizens' Voice.

Q. And who was calling?

A. Paul Krzywicki is the reporter.

Q. What was the last name?

A. Krzywicki. I don't know if he's still working for them or not.

Q. And what was the substance of the conversation you had with him?

A. Well. I talked to the night editor first. He called me—Justin O'Donnell—and he said, do you want to know what was going on? And I said, I don't know what you're talking about. And he told me about this so-called alleged tape. And then he put me onto this reporter and the reporter repeated pretty much what Karolyi had told me, that they were in possession of a tape and—well. I talked to him a little bit.

Q. Tell me what you meant about what you said and what he said.

[29] A. Well, I made a statement. I thought it was some kind of a setup and he admitted where he got the tape—who gave it to him.

Q. Well, who did he say gave him the tape?

A. Well, Jack Yocum, the taxpayers' group. When I talked to Karolyi, I felt that's where it was coming from anyway but I have no proof of it. I didn't want to make a big thing of it, but I just suspect. That's what I said. I says, it's a setup. He admitted that he got it from this group of people, and they had—obviously they must have played it. No, I don't know if they heard it on the radio or not, but they did have the tape.

Q. Again, do you know at the tine of this conversation whether the tape had been played yet on The Fred Williams Show?

A. I really can't recall that. It was very close to that time.

Q. Did he play the tape for you—Mr. Krzywicki?

A. No, and he didn't want to.

Q. Did he tell you what was on the tape? Had he listened to it and did he tell you what was on the tape?

A. Pretty much, yeah. Karolyi was the one that [30] really wanted me to listen to it.

Q. And after he told you what was on the tape, what did you say to Mr. Krzywicki?

A. I told him I had nothing to say. I think—the newspaper article—I think you might have it there—quotes and quote on the thing, I said, I just have no comment to make. Paul Krzywicki. In fact, part of it was it bold type the first part of the article was in bold type.

Q. I don't think I have that particular article with me at this time.

A. It appeared the same time Karolyi's article appeared the next day.

Q. I was going to ask you next, was there a story in both the newspapers the next day about this tape and what was on it?

A. Yes, covered in a slightly different way.

Q. What do you mean covered in a slightly different way?

A. Well, I think The Times Leader was a little more cautious about how they reported it. They used the word 'alleged' and they did not mention names of people.

Q. They didn't put your name in it?

A. No, not until long after, I think.

[31] Q. They did eventually?

A. Yeah, but at first, as I understand it, they didn't do it.

Q. How about The Citizens' Voice?

A. I'd have to look at the clippings. They may have—yes, they mentioned the names of the people before The Times Leader.

Q. When you say the names of the people, they mentioned your name and Gloria Bartnicki's name?

A. Yeah, right, but The Times Leader did not go right out and do that.

Q. But they reported the existence of the tape and that there was certain people involved in the union who had had a conversation where they had threatened to blowup the front porches of school directors' houses?

MR. WENDOLOWSKI: Object to the form. You can answer.

A. Yes.

Q. The existence of this tape, did this get a lot of coverage in the media?

A. Yes.

Q. Was there several days of stories concerning it in the newspapers?

A. Yes.

[32] Q. Was there also coverage of the fact that there was such a tape and what it said on the television stations?

A. Yes, some stations more than others.

Q. But to your knowledge, did they all at least report something about it?

A. Yes.

* * * *

[36]

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Q. Did you hear any part of the tape played in any other either radio or television show or report?

A. Yes. One of the TV stations, that was WDAU, I believe.

Q. Channel 22?

A. Channel 22. One night I happened to be watching it—played part of my voice, they were acting as judge and jury. They played my voice on that and then a copy of my voice when I announced the strike. They didn't say anything but they had some kind of caption on there, you make the judgment. So they were asking the public to make a judgment.

Q. And you said they played part of that tape?

A. (Nods head.)

Q. Which part of the tape did they play?

[37] A. I think it was the part—

Q. Feel free to refer to Exhibit 2.

A. Back here about the porches, I believe that's what it was. And what part of the other tape they played—it was just some part when I made the announcement that there was a strike. I don't know where. They took it out of context and it—everything was taken out of context.

Q. Okay, The part that they played is, I think it's Page 7. If you look, there are small numbers—the pages are numbered. There at the bottom, is that what you're making reference to?

A. On Page 7?

Q. Yeah.

A. Yeah.

Q. On the bottom?

A. Yeah.

Q. Goes onto Page 8, top of Page 8?

A. I guess it was some part around there.

Q. The part where they said, 'If they're not going to move for three percent, we're going to have to go to their, their homes to blow off their front porches, we'll have to do some work on some of those guys.'

A. Yeah. that was the part, parts of that, that [38] section, yeah.

Q. Channel 22 played that and then were asking their viewers to phone in and comment on it or they were—what were they doing with that?

A. I only saw it once, as best I could—they played that and then they played a part of when I announced the teachers were going to go on strike.

Q. Okay.

A. And they had a caption to indicate, is this the same person, you be the judge. Something to that effect. I would never be able to remember exactly what they said.

MR. WENDOLOWSKI: Off the record for a second.

(A discussion was held off the record.) (Continued by Mr. Brobst):

Q. So this was on the 11:00 news?

A. Yeah, and I think they played it once, to my knowledge. I don't recall.

Q. And they were asking people just to listen to your voice on the tape and your voice when you announced the strike and to—they're asking their viewers to decide for themselves whether it was—

A. Yeah, you be the judge.

Q. —whether is was the same voice?

[39] A. Yeah.

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[76]

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Q. Are you aware of the fact that a cellular phone conversation can be intercepted?

A. I'm not aware of any of that.

Q. You thought that a cellular conversation was as secure as using a telephone wire?

A. Well, I just never expected it to be [77] broadcast on a radio station.

Q. Well, that's a different issue.

A. No, that's the issue I'm at. I mean, hey, everything we do is taped. I mean, I have no problem with that. Stuff is taped all the time.

Q. You mean—when you say—what's taped all the time?

A. Well, conversations.

Q. Do you mean cellular phone conversations?

A. Any type of conversation. You don't know if your line is tapped or not or how they're doing it.

* * * *

Q. Well, from the basis of your answer then, Mr. Kane, you assume no matter whether it's a cellular phone or a regular phone, that your phone conversation may be intercepted?

[78] A. I never thought of my Phone conversation being intercepted at any time, never. When I spoke on the phone, I spoke very forthright and I just say things like I'm carrying on a private conversation. I just don't expect to have it repeated by anybody.

Q. You don't expect to have it—

A. That's not even—tell you on my part, but I just don't expect that.

Q. Well, I thought you said just that previous to me, and the record will say what it says—

A. Yeah, that things are taped, yeah. I know that, but not to be broadcast on the radio.

Q. But not to be broadcast on the radio?

A. Right.

Q. So what I'm saying is, you weren't surprised that somebody had overheard the conversation but you were surprised that somebody had put it on the radio?

MR. WENDOLOWSKI: Object to the form. You can answer.

Q. Is that correct?

A. Yeah, basically, I just didn't even expect people to be taping my conversation because I didn't think it was of any interest to them. I talked to Gloria five times a day at that time on covering everything from a member not getting their dues card [79] to negotiations. I just didn't expect that to happen—that's all—any of my conversations.

Q. You didn't expect then to be broadcast on the radio?

A. No, never, never thought of that. Last thing I ever thought of. I didn't anticipate it being picked up by anybody. but I know that it can be done. They have all kind of things today. A pin that can televise you; I saw one.

Q. So what was your reaction when you found out about the fact that this tape was being broadcast on The Fred Williams show and indeed, you know, that the other media also had copies of it. What was your reaction?

A. I thought that it was sort of unfair, that the was the first thing that struck me. You know, self-concern. you know, that type of thing. And I thought it was, you know, totally taken out of context, out of the meaning of what it was supposed to be because I certainly am not a criminal. And people that know me know that. I mean. I certainly would not attempt to do such a thing.

Q. You wouldn't attempt to blow up the porches—

A. No. I'm afraid not.

[80] Q. —of even Mr. Warman's porch?

A. No, no, no. And that was never said to anybody, first, I mean, directly, never. I never threatened anybody at any time, school directors, in spite of our differences of opinion, never happened that way.

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[84]

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Q. Okay. Now, turning to Page 8 of the transcript. which is Exhibit 2, right after the part I just read about the, you know, blowing off the porches et cetera, and you end up indicating that you're obviously upset about the fact that they're talking about—the School Board is talking about their negotiating position in the newspaper, correct?

A. Yes.

Q. And then you said, 'You don't discuss this in public, particularly with the press.' Gloria Bartnicki said. 'Exactly. . . Well, but now, uh, all rules are off and they'll discuss anything they want.' And you said. 'Yeah, well if the rules are off, the rules are off for us, too.' And Bartnicki said, 'Exactly.' You said, 'The rules are off for us. too. So, if you want to get beat over the head, too, get beat over the head.' What did you mean, the rules were off?

A. Well, negotiating rules. I mean, they ran to the press constantly; they were doing things that were unorthodox in negotiations. They weren't following any rules at all, so we could do the same things as far as perhaps going to the press. Although [85] they had the advantage.

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Q. And what did you mean when you said, 'The rules are off for us, too. So if you want to get beat over the head too, get beat over the head'? What do you mean by 'beat over the head'?

A. Another figure of speech. Negotiating at the time and, you know, I don't know what else to say. We would play rough in the negotiating game, too. We were very calm up to that point, trying to get them to understand reason. We

weren't you know having any strikes or we were—slowdowns or anything else. We were just trying to get them on the right side to understand what our position was. It was very difficult to get them to understand it because they didn't want to understand it. That's all that meant.

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[93]

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Q. What was the status of the negotiations at the time that this conversation took place?

A. Up in the air really, in pieces. Very little settled.

Q. There was nothing very—

[94] A. Very little settled.

Q. Was it a fairly—at that time, was it—would it be fair to characterize it as a very contentious negotiation that was still going on between the district and the union?

MR. WENDOLOWSKI: Object to the form. You can answer.

A. Yes, yes.

* * * *

[96]

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Q. And you feel that the tact that he played [97] the tape of the conversation held you up to ridicule?

A. I think so.

Q. In what way? I mean, just the mere fact that he publicized it?

A. Well, probably thought I was some type of gangster, what else?

Q. What evidence do you have that your reputation was harmed in the community or in your profession?

A. That's what I'm feeling.

Q. I know that's what you're feeling.

A. That was my feeling when I heard it, that I was being ridiculed.

Q. Are you aware of any objective evidence of that of any kind?

A. I don't know how people that I don't know would react to me on that. My friends, it didn't matter anything.

Q. I'm going to say, are there any people who were friends of yours that are no longer a friend of yours because of that incident?

A. No, no. But I don't know how it appeals to other people that I don't know, strangers.

Q. Well, then you don't really have any evidence of what—you can't name for me the name of [98] any person whose opinion of you was diminished by that, sitting here today; is that correct?

A. I would say so

Q. That is correct?

A. A personal, yeah, of a person that knows me.

Q. Right.

A. But I can't speak for people that don't know me. They saw that, they'd think I'm a gangster of some kind.

Q. Well, do you know—can you give me the names of any person who really doesn't know you personally but who has that view of you?

A. Well, I don't go to seek then out; I wouldn't go looking for them. I don't have the time to do that.

Q. So you can't give me the names of anybody?

A. No.

Q. You haven't been affected in your job in any way by this, isn't that true? You're still doing what you always did?

A. Right. The Board is doing other things to me, but not because of it.

Q. Not because of the tape?

A. It's hard to tell what they're doing because they're trying to change my schedule and cut down on [99] teachers and giving me extra work.

Q. Do you think that was because you're the union leader?

A. That's probably part of it, and they didn't necessarily, you know, get what they wanted in negotiations.

Q. Can you identify for me in any way you were economically harmed by the playing of the tape by Mr. Williams on his show?

A. No, I don't think so. I still have my Job.

MR. WENDOLOWSKI: By 'economically', you mean out-of-pocket losses of dollars?

MR. BROBST: Right.

A. Yeah. I'm still working and, like I say, people that know me, even acquaintances in the community that—I'm associated with the United Way and I've been acting that—it hasn't affected my contacts with people like that.

Q. This hasn't affected your community activities in any way?

A. No.

Q. And as far as you can see, it hasn't affected your standing in the community?

A. I don't know how other people—how the general public look at me.

[100] Q. Well, my question is though, as manifested to you. You're not aware of any—you can't point to me to any incident where you felt—

A. That anybody said anything to me?

Q. Right.

A. No, but I'm sure they have their own opinion. I'm sure they have their opinion.

Q. You didn't suffer any physical injury as a result of this, did you?

A. No.

Q. You didn't consult with any physicians or psychologists or psychiatrists because of the playing of the tape?

A. No.

Q. You didn't suffer any emotional distress as a result of the playing of the tape?

A. Not that I can—I don't think so. I was mad. I was angry, but I don't think that was emotional upset.

Q. What did you do, if anything, to counter the publicity, what you viewed as the publicity campaign against you as a result of the publication of this tape? Did you take any steps to have your own media campaign to counter it in any way or information campaign to the media?

[101] A. I think I just said it was referred to counsel or PSEA counsel, or some such thing. As I said, I didn't discuss the episode very much in the press.

Q. Well. did you tell the press that it was only a figure of speech and that you didn't really mean what it literally said?

A. Yeah, they wrote about it and said it that way.

Q. But did you tell reporters that that—

A. Oh. Well, I said, it was just a harmless thing. The experienced reporters knew what was going on, you know. In fact there was columns written about it. Mike McGlynn wrote an article about it and other people.

Q. And the nature of that article was favorable to you?

A. I would think so. There was even a cartoon in it. How many times does the football team says, I'll kill you and, you know, stuff like that. That type of thing. So there was a little bit of balance on the thing, but not an awful lot.

Q. And the balance was that it was played at least by some of the people, some of the reporters played it as a comment that was just one in jest and [102] not a serious comment?

A. Yeah. it yes part of the negotiation process. Labor management type of thing that goes on all the time.

Mr. BROBST: I'll have this marked as the next exhibit.

(Deposition Exhibit No. 4 marked.)

Q. I show you what's been marked as Exhibit 4, and is that the article by Mike McGlynn that you just made reference to commenting on the tape?

A. Right, yeah, October 3rd, yeah.

Q. And that was published shortly after the tape was played for the first time on The Fred Williams Show, is that correct?

A. Yes.

Q. And you viewed this as a favorable article, correct?

A. Yeah. I would say so—trying to bring some semblance of what was said. Favorable in that respect. I didn't think he said I was a great guy but, I mean, what he did say is detailed.

Q. He said it was metaphorical, what you said. I think is what he said, is that correct?

A. Yeah.

Q. The article will speak for itself. Now [103] you're saying there was other articles written that were less favorable to you?

A. Well, the way it was said—yeah, I don't think they were columns necessarily, but I think in the news they implied certain things. They didn't try to explain you know, too much.

Q. They just quoted what was on the tape without making an explanation of it?

A. Yeah, right.

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Q. It says 'actual damages.' That's what I'm saying. You've already testified you weren't economically hurt.

A. No, I just feel that every time he blasphemed me—and that's what he did—it was damaging to my reputation, And maybe it affected me in ways I don't know. I don't know. Maybe I lost some income in other lines of work that I do, other [106] than teaching. I didn't lose my job teaching, but I'm an active musician in the community; I have been since I've been 15 years old.

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Q. So you're not sitting here today saying that because Mr. Williams played those tapes, that somehow you've lost money being a musician? Because you don't know that.

A. I don't know. These are the unknown things I don't know.

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Q. Apart from the musicianship then, you're not making any claim—you can't tell me any claim here today that you're making for any actual damages that you've incurred as a result of the playing of the tape, is that correct?

A. That's right.

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Q. Well, Mr. Vopper had a point of view on this whole subject, didn't he, that he thought the teachers were asking for too much of a raise, correct?

A. It went beyond that, it went beyond that. He was vindictive in everything he did, and I really think he was trying to do physical harm because he got Burns and Warman to mention the type of cars that I could drive, the color and so forth.

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Deposition Testimony of Plaintiff Gloria Bartnicki, December 30, 1994

[9] By Mr. Brobst [Attorney for Defendant Frederick W. Vopper, et al.]:

* * * *

Q. What would be your role with the—in the collective bargaining process that took place here between the Wyoming Valley West School District and the teachers' union?

A. I was titled the chief negotiator because I was the chief spokesperson at the table. So that meant that at its onset, I would meet with the negotiating team; find out what they wanted to propose. Our office prepared those proposals and then orally, at the bargaining table, I would present or package and our counterproposals—things like that.

Q. And how did your role jive with that of Mr. Kane's? In other words, how did he fit into what took place in the process?

A. Okay. Tony was the local president, so he really had charge of the local. I was there as an advisor and again as the chief spokesperson at the bargaining table.

Q. So Mr. Kane, with this committee that he said he appointed, they would determine what their position was—

[10] A. Yes.

Q. —and they would tell you and then you'd be the one who would verbalize that during the negotiations?

A. Exactly.

Q. But what position they should or shouldn't take, while you may provide advice on, that was for Mr. Kane and his committee to decide?

A. Absolutely.

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Q. Until Mr. Williams played it, you didn't know it'd been disseminated to the media?

A. No, I did not.

Q. And indeed, you don't know whether it was disseminated to the media—other than Mr. Williams, whether the other media got it much prior to the time that he played it?

A. Some people have told me things, from the media, about when they got the tape.

[14] Q. And what have they told you about when they got the tape? And be specific as to which media you're talking about.

A. Okay. Anne Karolyi from The Times Leader told me that they had the tape from the spring of '93 and that the only reason—they were not going to use it and that the only reason that they did is because Fred Williams revealed it and The Times Leader management felt that they didn't want to not publicize it. I'm trying to think of who else. Somebody—I've had conversations about it with Kevin Jordan from WYOU and with Kathy Bozinski from WBRE. One of them, and I'm not sure which one, mentioned that they had had it for a while before.

Q. Before Mr. Williams played it?

A. Right. I forget what your original question was. What my relationship was with the media?

Q. We'll go back to that. What your relationship with the press was prior to, you know, how you interacted with them?

A. I believe it was a very surface kind of relationship. Once in a while someone would call, I don't even remember

names because they constantly changed, and asked how are the negotiations going? Is there going to be a strike?—very usual questions. [15] Anne Karoly; from The Times Leader was really the individual that I spoke with most because she was assigned by The Times Leader to sit at all of our meetings.

Q. For the negotiating sessions?

A. No, no, just—

Q. The School Board meetings?

A. No, through—at the negotiation sessions she would sit in a—the lobby, I guess, of the school. And she would have to sit around for hours and hours and sometimes when we were caucusing we would chat about things. So she was the one that I had—I don't want to say a close relationship but she's the one that I talked with the most.

Q. So she relied on you to get information about what was going on in terms of the negotiations?

A. I don't know if she relied on me, but. . .

Q. Well, she's one of the people?

A. Yes.

Q. She could have had other sources?

A. Yes.

Q. Okay. How about anybody form the Citizens' Voice that talked to you for information?

A. Before the release of the tape?

Q. Right, correct.

[16] A. I can't remember.

Q. And how about any of the TV stations?

A. I'm trying to get a time frame here. The strike was in June of '93 and then the tape was released in September.

During the strike—I'm trying to think of the guy's name from Channel 16—Jim Renick was at a picket line one day and we exchanged a couple of words about the strike.

Q. Did he interview you on camera?

A. No.

Q. Would you talk to them on camera?

A. No.

Q. But you were willing to answer questions off camera to give then information?

A. Yes. Kevin Jordan, I've known him for years, and he would just be around, you know.

Q. Ask you for information?

A. Uh-huh.

Q. Kevin works for Channel 22, correct?

A. Yes.

Q. Anybody from radio ever contact you during this Period of time?

A. Yes. The guy that's not on WARM anymore. Kevin Lynn. He had contacted me one day because he felt that there was a great misunderstanding about [17] teacher tenure and about the actual negotiations process, about the arbitration process that takes place during negotiations. And he did an on-air interview with me and I was on my car phone, as a matter of fact, when that took place.

Q. Oh, he interviewed you on your car phone?

A. Yes.

Q. And he broadcast it simultaneously or reported it—

A. Yes, simultaneously.

Q. And then he probably recorded it too and played it again during the news?

A. It was a talk show kind of thing and I remember him saying we have Gloria Bartnicki on the line. He had called our office and said it was very important that he talk with me, so I called him back from the car phone.

Q. And what was the nature of that interview? I mean, just what was subject matter of it?

A. A little bit about negotiations. He wanted some clarification about what teacher tenure meant, was it really possible to fire a teacher or was the public opinion that a teacher could never be fired, true. Very benign kind of interview. And I can't remember when that took place, but it was during this [18] process.

Q. But that was before September of 1993?

A. Yes.

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Q. When you say you didn't talk to them about the tape with them, is that because you just refused to comment?

A. Yes, I did.

Q. And why did you do that? Was that on the [19] advice of counsel or did you just decide yourself you didn't want to comment on it?

A. I had decided, personally, that it was too disturbing to get into a fray with then and PSEA had advised me not to comment on it.

Q. "Was too disturbing to get into a fray with" who?

A. With the media about—do you really think Tony was going to blow off porches? Just did not want to talk about it.

Q. Well, did you really think that Mr. Kane was going to blow off porches?

A. Absolutely not. And for the record, I've known Tony for 24 years. I've heard him talk tough for 24 years and never once thought that he would hurt a fly.

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I do know that at that particular time Tony didn't tell you this; Tony wouldn't tell you this—he was very upset about the possibility of a strike in Wyoming Valley West, and for a while before the strike took place, the team and I were trying to convince him that the strike had to take place. And he really hesitated at the time of the conversation—and we believe that it took place sometime in late May, the strike was going to take place sometime the first or second week of June. When he talked like [21] that, in my mind, I knew that he had come to the conclusion that we were going to have to go ahead with the strike, and that's the only thing that I thought about when he said it:

Q. That he was very upset about that?

A. Well, that he really had come to the realization that this strike was going to have to take place. In the law, in order to get to the arbitration process, there are only two ways you could do it, and that is by both parties agreeing to voluntarily go to arbitration or there had to be a strike which put the 180 days in jeopardy and then you'd be forced into arbitration. We had asked the Board on a couple of occasions to go into voluntary arbitration and they refused. So we knew that to get to the next step we would have to strike. And it was just about that time that we were all realizing it was really going to have to take place.

Q. And this had an upsetting effect, you're saying, on Mr. Kane is that what you're saying?

A. Yes, it did.

Q. So you took his comment to be a hyperbole by a—by someone who was somewhat upset by the prospect of having the—ruin his record of no school strikes?

A. Yes.

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A. 1993, because this tape was released one or two days after the arbitrator's decision on the [34] dispute was released to the Public and we basically won that arbitration.

Q. But it was non-binding?

A. It was non-binding. And it was immediately after that that the tape was released.

Q. So the big news event going on at the time that Mr. Williams first played the tape in September of 1993, the end September, was the arbitrator's decision that was—the non-binding arbitrator's decision that was favorable to the school teachers?

A. Yes.

Q. And how much of a raise did that arbitrator recommend?

A. I'd have to check the documents, but I believe six percent.

Q. And that was closer to what the teachers had wanted than what the School Board was offering?

A. In the arbitration process, the arbitrator may choose one side or the other. He may not come down in the middle or closer to one or the other.

Q. So he chose the teachers' position?

A. He chose at the teachers' position.

Q. And what was the School Board's position on that?

A. I can't remember exactly. It might have [35] been around three percent, but I'd have to check.

Q. And the people who were opposed to the teachers were very unhappy with the arbitrator's decision?

A. Very. It was the School Board; I'm referring to the School Board.

Q. So it was in the context of that decision and the controversy that that generated that Mr. Williams first aired this tape, is that correct?

A. Yes. It was publicized too that part of the arbitrator's decision stated that he felt that the School Board had not acted realistically in lowering taxes that year. I believe that they lowered the taxes by a half mil. And he took a couple jabs at their management policies, which I believe could have been embarrassing to then. And as I look back on it now, that could be what sparked the tape, to sort of divert the attention free what the arbitrator's decision was to the goon and the goonette.

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Q. In the document, what you're looking now is Exhibit No. 2?

A. Yes, yes. It says that the tape was, I don't know, something, warped or whatever, to protect the phone numbers. At one point, he did play this part of the tape that released my phone numbers because I had to change my phone numbers. I began to get terrible calls after that. So I don't know how that was done.

Q. Calls from who?

A. I have no idea.

Q. What were the nature of the calls?

A. They were hang-ups; they were sarcastic comments about teachers. And I instantly called the phone company And it all happened on the same date. He supposedly played part of the tape and I got a couple of calls from people saying your phone numbers were just on the radio, and the calls started within hours and I had my number changed. I also had to have my car phone number changed.

Q. Why'd you have to have your car phone number changed?

A. Because he released that also.

Q. What, he said call these people and tell them what you think of their proposal or what they're [38] doing?

A. No, he played—and I didn't hear it—but from what I understand. he played that part of the tape where I was giving Tony my car phone number and my home number.

Q. Oh, okay. That was part of the tape?

A. Yes.

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How long have you owned you car phone—or your cellular phone?

A. Five years maybe, four or five years.

Q. And do you have the same feeling of security in terms of your conversations being not overheard by anyone out there when you use that phone as when you use your regular phone?

Mr. WENDOLOWSKI: Do you mean now or before this incident?

Mr. BROBST: Before this incident.

A. Before the incident. I believed that that phone was as secure as a house phone. We had purchased the phones as a group in our office and our region. Three or four of us bought the phones on the same day. And the representative from CellularOne, his name was Paul Smedly, he no longer works for them, told us that the phones were just as safe as any phone that we used. And the literature that CellularOne gave with the phone, indicated that it would be extremely difficult for anybody to intercept [45] a call and that even if they did, it was illegal for them to either tape it or publicize the contents of it. I never thought about it again. I talked on that phone as if I were on my house phone.

Q. Did the literature though, indicate that it was possible to intercept it even though it would be illegal to do so?

A. The literature said that is was, I don't know the exact words, but I—extremely difficulty. And I have a copy of that; I could show it to you.

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Q. So has this altered the manner in which you use your cellular phone?

A. It has altered the manner in which I live, Mr. Brobst.

Q. But I'm asking specifically in terms of the way you use your cellular phone. Has it altered the way in which you use that phone?

A. Yes.

Q. In what way?

A. I always think that there's somebody listening. I try to be extremely careful with what is said on the phone. It's cut down on my efficiency in the job sufficiently because I use the phone quite a bit in my job and I hesitate to do that now.

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Deposition Testimony of Defendant John Yocum, Taken by Plaintiffs, January 27, 1995)

[11] By Mr. Wendolowski [Attorney for Plaintiffs]:

* * * *

Q. Are you affiliated with the Wyoming Valley [12] West Taxpayers Association?

A. Yes.

Q. And when did you first become affiliated with that group?

A. I don't know the exact date. Three years ago possibly in that area, it started. It was around the time that the Dallas taxpayer forum was fighting, in that area.

Q. And what's your affiliation with that group?

A. I run it as president, or whatever name you want to—

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Q. Did you have any conversations with any [17] members of your network regarding the support of candidates running for election since you became associated with that network?

A. I was probably—I would think that there were conversations when people would ask me, who do you support in something like that? I would think that that probably occurred. I don't remember specific conversations saying, oh, I think we need to do this. But I do believe that there were times when someone would certainly ask me, what do you think of this candidate. And I would give them an opinion if they asked me.

At a certain point in time, it became known to all of us, and which I've had a primary part in, of understanding that to win

what we're doing, to win the war is more important than to win the battle. So even at that time, during those election times, our focus is on a much higher plane than locally.

Q. First of all let me ask you, what's the war you're talking about?

A. The war to taxpayers would be against a union that we view as being out of control.

Q. In what way?

A. With their aspirations for money and benefits.

[18] Q. Any other way they're out of control?

A. Out of control in behavior.

Q. What type of behavior?

A. The many threats that I received at home, in my business. My family received threats. Having school board members tell me that, by Ross Galteri, who is one of the higher union people in the Wyoming Valley West Education Association, who said to—the one person I'm sure of that sat in on this conversation was Neil McAndrew. It could very well be in my memory. I am not sure of this. Could be Kevin Warman. This is not a direct quote, but the implication was clear, that you people had better start looking under the hoods of your cars before you start them in the morning. That to me is not behavior that I would want my children, if I had children, I would not want my children being taught by people like this.

Q. Any other behavior?

A. Behavior like taking the petitions that were given to—the 25 hundred signed petitions, pouring over those petitions and calling and harassing those people in their homes because they knew who they were, is not what I deem moral, good, behavior by people that care about children.

[19] Q. Any other behavior?

A. I think—to me, just because I oppose them on a level of money and benefits—to be totally ignored. Excommunicated from their world. Boycotted, as I hear. Can't prove, but hear my company is. I think is not behavior that I would do to anyone.

Q. Anything else? Any other behaviors?

A. Hearing the tape, clearly to me, I felt morally in a position where I had to make a decision. And I clearly—and my belief is that I had to make a decision morally whether I should do something with that tape or not. And I don't think that that is behavior that I view as responsible.

Q. When you say behavior you view as responsible, you mean the conversation that took place in the tape?

A. Correct.

Q. Any other behavior?

A. The rest is hearsay things.

Q. Such as?

A. Hearsay things of things that are said to me from people that work within the district that might see or hear things that go on.

Q. What have you heard, and from whom?

A. Again, this is real general. And I don't [20] remember, because this is so many years ago. Just things that go on about how—comments that would be made by people that are in the union. I mean, real union people, not just regular teachers, about taxpayers. Ross Galteri making comments, I know, at the Forty Fort Fire House in glee, that he joined the Wyoming Valley West Taxpayer Forum. As if we wouldn't know who he was.

It's almost like it's a contest. That's why the term war comes out. It's not a war to us. We just want responsible leadership from our people that we pay to teach our children. And that's how we view it. And they view it as, this is a war. I mean, to them. We are excommunicated, many of us. And I again say, in that respect, that I don't agree.

Q. Any other statements that you can remember, and from whom?

A. People that would sit in school board meetings that would hear the comments made behind them or around them. And again, I don't remember all the—I can't tell you specifics. It's general information of things that went on during certain school board meetings by taxpayer people that were sitting in the audience.

Q. What was being said, and by whom?

[21] A. Remarks that would be made. And again, I only know—it's too long ago. I can't remember all the things that—

Q. What were the nature of the remarks that were being made?

A. Anti-taxpayer. Like we are anti-education. Propaganda.

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Q. Let me get back to the specifics of the behavior that you thought was inappropriate. You said you received threats at home. When you did you receive these threats?

A. I would get hang-up phone calls at home. I received one phone call at home that was, it was similar to phone calls I had at work. Which were in essence telling me, if I didn't stop what I was doing, that they would have my company—

they were going to have—something like OSHA or some similar organization come in and go through my building. In other words, the intent was to make me spend money, and aggravate me.

Q. Any other threatening phone calls that you received at home or at work?

A. Threatening phone calls at work—one of my employees was there to hear. And I don't remember which one it is, but I did mark all this down. And I can access it, if you do need it. But, telling me that if I don't back off, that I could be hurt.

Q. Did you report these threats to the police or any other government agency?

A. I don't know if—I may have called the [24] police to tell them. I do remember definitely letting WILK know, and WARM.

Q. And who made the threats?

A. I don't have a clue.

Q. And, Mr. Yocum, why would you report the threat for sure to WILK and WARM, and not so sure to the police?

A. Because I don't think—I think knowing what the police would do, would be to say to me, well, Mr. Yocum, there's not much we can do. If they persist, eventually—I'm just—I know what they would—that would be—I would expect that that's what would happen. And if I did call them, which I very well may have, just to have it on record that I made the phone call.

My view is being public is protection. And at least it's out there. By calling the police, I really have no protection. If I'm beat up, that's when they can do something. Or if something were to happen to me, that's too late.

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And I want to ask you some questions about that. First of all, where did the tape come from?

A. I have no idea.

Q. And where did you get it?

A. It was in my mailbox.

Q. When was it in your mailbox?

A. I don't even remember the exact time. The only thing I remember, it was cold. It was still cool.

Q. It was cool.

A. And I came home and found it.

Q. You'll recall that this tape was eventually played on the Fred Williams Show?

A. Yes.

Q. In that time frame, from when it was first played on the Fred Williams Show, can you give an idea of when you got the tape? And I think I can represent to you that it was played on the Fred Williams Show either the last day of September or the first day of October of 1993.

A. The only thing I can remember is that it was—because it's again, a while ago. It was cool and I thought spring. I thought it was in the spring.

[31] MR. BROBST: Just for the record. My recollection of Mr. Williams' testimony was that he didn't play it right away after it was delivered.

(Continued by Mr. Wendolowski):

Q. Any idea who made the tape?

A. I have no idea.

Q. Any idea of how it was made?

A. I have no idea.

Q. Have you ever had any discussions with anyone of how you thought it was made?

A. I think everyone would sit and wonder how something like this could be picked up. And the only thought I ever had is that obviously one of these phone lines in my opinion had to be ungrounded. I remember speaking with the Times Leader People, and they said they pick up phone calls constantly from cellular phones or ungrounded phone lines. They hear them all the time. So I'm just thinking—the only thing I could ever imagine is that somebody just picked it up somehow. I have no idea how they did it.

Q. Who did you discuss that with at the Times Leader?

A. Oh, I don't remember if it was Tom Dennis. I don't remember if it was a reporter. But they said somebody over there—this was so long ago—told me [32] that they pick up phone calls on their, whatever—scanners, or whatever—media constantly.

Q. Did you ever discuss how it was made with Fred Williams?

A. Just probably, just the same things that I've just said to you. Just surmising how something like this could occur. I have really no idea. I'm not an expert in electronics.

Q. Do you have any background in electronics?

A. No. I have trouble hooking up my VCR.

Q. You own an electronic receiver?

A. No.

Q. You own any scanners?

A. No.

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Q. Other than playing the tape for yourself, have you played the tape for other people?

A. School board members asked me, when I played [34] for it them.

Q. How did they know that you had the tape to ask you to play it?

A. I let them know.

Q. And which school board members did you let know you had the tape first? The ones that you let know first?

A. I'm not—again, my memory may not be serving me well. But I think the people I played it for were Jim Burns. I don't know if I played it for any of the others, except that I know that Neil McAndrew came over to my home to hear it.

Q. And you played it for Mr. McAndrew in your home?

A. He listened to it.

Q. Did you play it for Mr. Warman?

A. I don't remember if I did or not

Q. Mr. Youngblood?

A. I'm not sure. I really don't remember.

Q. Did you play the tape for anybody else besides school board members?

A. Nope. Obviously this was a concern, a tape like this. And I was very concerned about it. The only place is WILK.

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Q. Okay. Let me rephrase the question. Other than the school board members that you testified to this morning that you played the tape for, did you [41] play the tape for any other person?

A. No. Not that I remember.

Q. Did you ever play the tape for Mr. Williams?

A. No. They listened to the tape when I presented it to them.

Q. Other that Mr. Williams of WILK, have you given copies of the tape to anyone else?

A. The only other places I gave a copy to is WARM, Rob Neyhard.

Q. Pardon me? Rob Neyhard?

A. Right.

Q. Did you give a copy or the tape to any other media representative?

A. Not that I remember.

Q. Is it possible that you may have given it to other media representatives but that you just don't recall doing it? I want to be sure that your answer is, either you don't remember, or you didn't do it, or you're not sure.

A. I really am not sure I did this. I am involved in two companies, and write in and do many things, and it's very hard to remember some things as good as my memory can be. I am not sure.

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Q. Describe for me how it came about that you gave the tape to Mr. Williams?

A. I listened to the tape. I determined that when you are the individual that hears something like what was on the tape, I had to morally make a decision. If I went to the police. I knew they would say the same things I described earlier about the phone threats. "Well Mr. Yocum, when someone's porch is blown off, or after something happens, we'll do something. We can't do anything before that."

So it was my position to, which I feel strongly about, make it public. And if WILK was willing to hear it, so be it. And that would at least provide protection in the best way that I could. I could not morally live with the fact that what if this did happen, if I did nothing.

Q. And did you call Mr. Williams and tell him you had something to give him?

A. I may have. I'm not sure I called to say that I wanted to see him. That I had something to give to him, yes. I may have done that. I'm not sure.

Q. In any event, there came a point in time [45] when you actually traveled to the radio station studio to meet with him?

A. If I recall, and again this is, I'm not sure of the times. But I believe, that I made that decision that very night after hearing the tape, and did that the next morning.

Q. And recall for me the best you can, the substance of your conversation with Mr. Williams when you gave him the tape?

A. What occurred—I do remember when I went there, because I was concerned and nervous. Mark Michaels was there. And we went into the studio and played the tape. I do remember that.

Q. What did you tell Mr. Williams or Mr. Michaels about what was on the tape?

A. I didn't tell them anything. As I recall, they just played the tape, and soon after that I left.

Q. I'm assuming at least you said, I have a tape I want you to listen to?

A. Right. I said really, that I found this. Told them what happened. Told them I listened to it, is what I'm assuming I said to them. I mean, it wasn't—and they listened to the tape. And what happened after that I really don't remember. I just remember that they listened to the tape.

[46] MR. BROBST: Just for the record who's "they"?

A. Fred Williams and Mark Michaels.

Q. Did you tell them who you thought was on the tape?

A. No. I think—I may have. I think knowing my association at that time, Wyoming Valley West was in turmoil with all the things that were going on. So it was a natural reaction for then to think that this had to do with Wyoming Valley West. And I'm assuming, and again, whether they—it's obvious—because he knew. If I remember. George Dervinis' name is mentioned on the tape. And so it's an obvious call, so they probably brought it up. I mean, I don't remember what transpired after that. I do remember I was not there very long, and I was out the door. Because I had to go to work.

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Q. You said that when you showed up at WILK that day. you were concerned and nervous. Why?

A. Because there were threats.

Q. Threats by whom?

A. The people I was assumming were Tony Kane and Gloria Bartnicki on the tape.

Q. And you felt threatened by the tape?

A. I felt concerned for school board members.

Q. You weren't personally threatened by the tape?

A. If you listen to the tape, I'm not the person mentioned at all in the tape. So that it was not a threat directed directly at me. I was aware of fact that if I gave this tape to Fred Williams, that I might become a target of, I suppose threats. But my concern was for school board members and their children.

Q. So just so I'm clear, you didn't feel threatened by what was on the tape, but you did feel threatened by the fact that you were about to disclose the tape to Mr. Williams?

A. I think it's nerve-racking to any individual when you're dealing with something like this. They [49] have threats on it. They're dangerous. I think it would be a normal human reaction to me.

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Deposition Testimony of Peter Paul Olszewski, Jr., March 10, 1995

[12] By Mr. Brobst [Attorney for Defendants Frederick W. Vopper, et al]:

* * * *

Q. And in fact, the President of the Pennsylvania State Education Association, Annette Palutis, wrote you a letter, also requesting that you investigate all the circumstances surrounding the [13] taping and dissemination of the alleged private telephone conversation; is that correct?

A. Yes, sir, I believe that is correct.

Q. Now, as a result—strike that. What was the outcome of the investigation? Was there any action taken against anyone?

A. Based upon the investigation, no criminal charges were filed. Number one, we were unable to determine the person or persons responsible for the actual taping. Number two, relative to the alleged threats that were made, we did not believe, for a variety of reasons, that that information resulted —that that conduct equaled a criminal offense, and therefore no charges were filed.

Q. How about with respect to the playing of the tape on the air by Mr. Williams, and for that matter, it was played on the air by Channel 16, and the transcript, I believe, was in part printed in some of the newspapers?

A. There was no active investigation relative to that aspect of this event.

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Q. And was there some reason why you did not?

A. It was my judgment that the conduct, while it may have been criminal, was not an area that I wanted to devote

significant resources toward investigation of. We have to prioritize the matters which we investigate and prosecute. We have a very limited, finite amount of resources. And it was my judgment that those resources were better spent elsewhere.

Q. Would it be fair to say that there was no, then, determination made as to whether or not there was any criminal violation by the conduct of any of the persons in the media who disseminated the tape?

A. There was no investigation to determine what—any facts, and therefore, there was no judgment made as to whether in fact it did constitute criminal activity.

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Q. Have you ever had any other conversations with Mr. Getz concerning The Fred Williams Show?

A. Yes, sir.

Q. And under what circumstances did that occur?

A. The circumstances were compliants that I [16] made about the untruthful, inaccurate, scurrilous, and certainly potentially libelous comments that Mr. Vopper has a tendency to make on a regular and frequent basis.

Q. Would it be fair to say you don't share Vopper's views on many public issues?

A. I don't know what public issues Mr. Vopper talks about, other than when it affects me and/or my office.

Q. Okay. So the criticisms that you relate that you had of Mr. Vopper had to do with his comments concerning either you or your office; is that correct?

A. Yes, sir.

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Q. So that meeting took place in your office, at the District Attorney's Office, County Courthouse, correct?

A. Yes, sir.

Q. And that was—can you put a date on that meeting?

A. No, sir.

Q. But it was before—

A. It was before the phone call he made to me about this matter.

Q. Right, okay. Did you, during the course of that meeting or any other time, ever tell Mr. Getz that unless Mr. Vopper changes his ways, that the District Attorney's Office would, in the future, cut his radio stations off, his news reporters off from information from the District Attorney's Office?

A. I may well have. We don't have a practice of disseminating information to gossips, town gossips.

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Q. Did you ever talk directly with Fred Williams about your complaints about his statements about you or your office?

A. Not to my recollection.

Q. Have you had any conversations, to your recollection, with Mr. Getz since the phone call concerning the tape?

A. I don't believe so, no, sir.

Q. Has your office in any way cut Mr. Getz'—the radio stations that he manages out of the information loop of the DA's Office?

A. It's my practice not to send news releases to WILK Radio.

Q. How about WGBI?

A. I'm not familiar with WGBI.

Q. Do you send press releases to other radio stations?

A. I send press releases to responsible media outlets.

Q. Well, my question, specifically, is other radio stations.

[21] A. Yes.

Q. How about television stations?

A. Yes.

Q. Is there anybody else other than WILK that doesn't get them?

A. From what group?

Q. Of the media. Is there any other media outlets that you've put in the same category as WILK that don't get your press releases?

A. Oh, nobody else is in the same category as WILK.

Q. Does that mean that they're the only ones that don't get your press releases?

A. There may be radio stations out there that aren't on our list of—just by chance or coincidence—that they're not on there, or they don't have active, you know, news—where news isn't an active part of their product, so that could be.

Q. Okay. There's nobody else on—

A. There's nobody else that I exclude.

Q. That you exclude because of your disagreement with what the radio station is putting on the air?

A. It's not my disagreement for what they put over the air; it's my analysis of their ability to act [22] as a responsible journalist—or their inability to act as responsible media representatives.

Q. Okay. WILK is the only station that you've decided is not a responsible—

A. Yes, sir.

Q. —media outlet in terms of radio and television stations; is that correct?

A. Yes, sir.

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A. Should a reporter from WILK be present at a press conference or amongst other reporters, I provide information to everyone present. So I don't—if a reporter from WILK is there, they're privy to and have access to what's happening at the time.

Q. You don't exclude them from the press conference is what you're saying?

A. Right.

Deposition Testimony of Nancy Kman, March 10, 1995

[7] By Mr. Wendolowski [Attorney for Plaintiffs]:

* * * *

Q. What was your position originally, when you were hired by WILK?

A. I was the afternoon news anchor.

Q. And has that position changed since then?

A. Yes. it has. I'd say in April of 1993. I assumed the position of program director. I was not named it. I was the interim program director as they searched—as well as news director. I was the news director. In November of 1993, I was named the program director officially, but I assumed the duties from April of '93 through November of '93. And now, since then, I've still been news program director.

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Q. What was your understanding of the circumstances that were going on?

A. Well, I knew the story; it was a big story going on. It was controversy. It was, you know, a newsworthy story at the time, that this school district was trying to—the schoolteachers were trying to get a raise, and the school board was not giving in. So it was a big story at the time. So I knew of the story in the background. I just didn't know the people involved.

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Deposition [Second] Testimony of Plaintiff Gloria Bartnicki, June 13, 1995

[11] By Mr. Gerow [Attorney for Plaintiff Jack Yocum]:

* * * *

Q: What did you talk about when you talked about getting a car phone?

A: That somebody was coming to the office about the possibility of installing some car phones and [12] those of us who were interested spoke with him.

Q: Did you talk about what kinds of phones you wanted, what they would do?

A: Not the kind, and as far as what they would do, he just gave us instructions as to how to make the call and end the call.

Q: That's all you were concerned with? You didn't ask any other questions about the capacity or the capability or technologies of the equipment?

A: We talked about the area where we would be able to make local calls where they would not be toll calls and we were told at that time that the entire state of Pennsylvania may become a local calling area within a few months if the technology permitted. It, obviously, didn't. And we were told that the phones were private.

Q: Who told you that?

A: Paul Smedley.

Q: Why did he tell you that—did you ask him?

A: I did not ask and I don't remember if anybody else did.

Q: Did he tell you that personally?

A: He told us that as a group.

Q: Were you present when he told you that?

A: Yes.

Q: Did this come up as part of his sales pitch?

[13] A: I don't remember.

Q: You don't remember anybody asking him that question?

A: I don't remember anybody asking the question but I do remember him talking about it.

Q: What, specifically, did he say—do you recall?

A: I can't quote him, because it was five (5) or six (6) years ago now, but I do remember him saying that it was safe to use the phone, that it was private, that it was like using a land line phone, and then afterwards, we had received books from Cellular One and those books also included the fact that while it might be extremely difficult to intercept a call, that it was illegal.

Q: When it said extremely difficult, did you take that to mean that it was possible or impossible?

A: At that particular time, I took it to mean extremely difficult.

Q: Did you believe that it was possible?

A: I don't remember what I believed. I don't know if I gave it that much thought at that particular time.

Q: Was it a concern of yours?

A: No.

Q: It was not a concern as to whether it was [14] private or not?

A: No, it was not.

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Q: You said it was a typical comment. Is it typical that Mr. Kane would say—we have to blow off people's porches?

[23] A: It would be typical of him to say something, and I am saying this in quotes—"roughhouse like that"—maybe not that particular comment, but is it Tony's mannerism to talk like that at some times, yes.

Q: Have you ever heard him say we will blow off somebody's porch at any other time?

A: No.

Q: What have you heard him say that would be similar to that?

A: As you've been asking me these questions, I have been trying to think of that. I am having a hard time coming up with quotes. Perhaps, the best way that I can describe it for you is that we are all used to Tony in some situations talking tough, and we all know what it means. During the negotiations—this may be an example for you—during the negotiations, some of the guys on the negotiating team and a couple of the Board Members who have been friends for years would joke with each other and say things like you had better watch yourselves when you leave this building if we don't get a settlement tonight, and everybody would be standing around in a big gang waiting for a meeting to start and there would be that kind of joking.

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Deposition [Second] Testimony of Plaintiff Anthony F. Kane, Jr., June 20, 1995

[4] By Attorney Wendolowski [for Plaintiffs]:

We have had a lengthy discussion amongst all counsel in order to clarify Plaintiffs' position and also hopefully alleviate the need for additional discovery of Miss Bartnicki and limit the additional discovery of Mr. Kane. We have reached an agreement as follows: And the agreement is that the Plaintiffs are withdrawing their claims for actual damages as set forth in Paragraphs 22 and 29 of the Amended Complaint, and are agreeing not to seek those actual damages. This agreement does not in any way affect the claims for any damages assumed in Paragraphs 23, 24 and 25, or Paragraphs 30, 31 and 32 of the Complaint. Is that agreed?

BY ATTORNEY GEROW: It's agreed. Mr. Wendolowski, would it be in keeping with our agreement if I reserve my right with respect to Ms. Bartnicki on issues other than damages?

BY ATTORNEY WENDOLOWSKI: I have no problem with that.

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[15] By Mr. Gerow:

* * * *

Q: How would you characterize the negotiations in 1993, up until the end of May?

A: Well, they were—a lot of publicity, a lot of excess publicity that contributed to a lot of bad feelings.

Q: Bad feelings on whose part?

A: Well, on the part, I think, of the association, the Union.

Q: Did you have bad feelings?

A: Yes, I had problems with the negotiation process.

Q: Was it something with the process that you had bad feelings?

A: The process and the people that were supposed to be a part of that process.

Q: Which people did you have bad feelings toward?

A: The people on the School Board that were running to the press every time we said something, and it was all repeated. You can't negotiate in that type of atmosphere, nobody can.

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And then when we got into negotiations, the first meeting we had, that night, everything that we had proposed was on the news—it was on the television station, that didn't happen by accident. It was the first time it ever happened to me.

Q: So you didn't like these guys?

A: I didn't like the way they were handling things. They had a responsibility the same as I did, and the responsibility was to get a contract.

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Q: Just so that there is no question about what we are talking about here. You were aware that a recording may have been made of a conversation that you and Miss Bartnicki had?

A: Yes.

Q: And when did you first become aware of that?

A: I think the day that it was on the radio, a number of people called me.

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Q: And who else's attention did you bring it to?

A: The officials, the PSEA.

Q: Which officials?

A: I believe we got the message to Annette. I don't think I called her myself, but Annette got the message—our staff got the message to her.

Q: Who is Annette?

A: Annette Palutis is the President.

Q: And are you aware of how "we got the message to her?"

A. No, I didn't go into details. All I know is they found out about it.

Q. You are sure that she was very quickly aware of it.

A. Well, I don't know how quickly aware she was. She didn't call me back and say—I just discovered it. I don't know when she found out about it.

Q: When did she call you back?

A: She didn't call me back. She didn't call me back.

Q: How do you know that you got the message to her?

A: I just assumed she got the message because it was all over the papers and PSEA was starting to answer [25] the charge.

Q: How quickly was it all over the papers?

A: Pardon?

Q: How quickly was it all over the papers?

A: Oh, a matter of a day or so, I think, it pretty much spread—maybe two (2) days.

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Q: Mr. Kane, do you have an immediate plan to bring an action against WDAU, Channel 22?

A: I haven't decided yet.

Q: Do you have an immediate plan to bring an action against Channel 16?

A: I haven't decided yet.

Q: Do you have an immediate plan to bring an action against the Citizens' Voice?

A: I haven't decided yet.

Q: Do you have an immediate plan to bring an action against the Times Leader?

A: I haven't decided yet.

Q: You do not deny, do you, Mr. Kane, saying to Ms. Bartnicki in your phone conversation: If they are not going to move for three percent (3%), we are going to have to go to their homes to blow off their front porches, we [38] will have to do some work on some of those guys , do you?

A: No, that was recorded.

Q: Did you say it?

A: Well, it appears that I said it.

Q: Did you say it?

A: Yes.

Q: What did you mean by that?

A: I went through this before—it's a figure of speech that meant no harm to anybody.

Q: Did you use those kinds of figure—did you use that figure of speech often?

A: No.

Q: Did you use figures of speech like that often?

A: No.

Q: Would you characterize this as unusual for you?

A: No, I wouldn't characterize it as being anything. I just said it and that's all.

Q: Did you ever say things like this in the past?

A: Not that I can recall.

Q: You can't recall any instance of saying anything like this?

A: No.

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Q: What did you mean when you said: The rules are off for us, too. So, if you want to get beat over the head too, get beat over the head?

A: Well, these are figures of speech. I don't know what else I could have said. I meant that we would have to fight back in our own way in the negotiating process. And if we use our own style of speaking, that's what I meant. I meant that we would have to do things outside the rules, too.

Q: What do you mean by outside the rules?

A: Well, maybe publicize the things that the School Board was doing.

Q: Is that against the rules of your judgment?

A: Yes.

Q: Which rule does that violate?

A: Well, the rules of mediation where a mediator comes and brings a settlement in and one of the School Directors puts it in the paper, the settlement.

Q: Which School Director did that?

[40] A: Mr. Lowery. I mean they didn't play by the rules from Day One.

Q: When you say it's a figure of speech, where did you come up with the figure of speech—blow off their front porches?

A: It's a statement that was made a few years ago by a state senator in this area—T. Newell Wood, who was asked to do something, to vote on something in the State Legislature, and he said something to the effect that I couldn't do that, or our front porches would be blown off. He was referring to the gang wars in Philadelphia, where some front porches were blown off. And that's where I picked up the phrase. It's really not too unique to me.

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Q: When you first learned that this tape was being played on the radio, did you do anything to try to stop it from being played?

A: How could I stop it? No, I didn't know, the answer is no.

Q: Did you ask your attorneys to call the radio station?

A: Not that I know.

[50]Q: Did you ask any officials at PSEA to call or contact the radio station to at least voice your objection to it being played on the air?

A: Oh, I think they did that.

Q: Did you ask them to do it?

A: No.

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Q: Do you remember Mr. Brobst asking you about your reaction to the taping of this cellular conversation?

A: Yes.

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Q: Do you remember saying in response to the question you thought that a cellular conversation wasn't as secure as using a telephone line—Answer: Well, I never expected it to be broadcast on a radio station.

Question: Well, that's a different issue. Do you remember then saying: No, that's the issue on that. I mean, hey, everything we do is taped. I mean I have no problem with that, stuff is taped all of the time. Do you remember saying that?

A: Yes, I did say that. With the sophisticated equipment that they have today, they can do almost anything electronic. That's what I meant.

Q: What did you mean when you said: I mean I have no problem with that?

A: No problem with what?

Q: Taping conversations?

A: Well, I do have a problem with taping conversations—taping my conversations.

Q: What did you mean when you said I have no problem with that?

A: I don't know quite what I mean, but I have a problem with my conversations.

Q: Were you surprised that somebody ever heard your conversation?

[52] A: Yes. I guess I was surprised. Oh, I didn't expect it. If you don't expect something and it happens, you are surprised.

Q: Do you remember saying to Mr. Brobst in response to this question: So what I am saying is you weren't surprised that somebody had overheard a conversation, but you were surprised that somebody had put it on the radio. Do you remember saying, yes, that's correct?

A: Yes.

Q: What did you mean by that?

A: Well, I don't know. I guess I was speaking too fast. I was surprised that anybody would put it on the radio and I was surprised anybody would tape the conversation. I think I said that earlier in the deposition that I was surprised that anybody would record the conversation. I think I said it earlier, prior to that. I didn't expect my conversation to be aired on a radio station.

Q: But that's really—that's the long and the short of it. It didn't . . .

A: And I didn't expect it to be taped. I didn't expect it to be taped. I don't want anybody listening into my private conversations on anything that I talk about. Even if I call to ask my wife to pick me up in the car, you know, pick me up with the car. I don't like anybody listening or eavesdropping.

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Q: Well, if somebody said that you talked tough, would you agree or disagree with that statement?

A: It all depends on what you call tough. I don't know what you mean. I have to lead people, I got to lead people. I've been leading the union for twenty (20) some years, I am not a daisy when it comes to talking to people.

Q: You never said anything seriously or joking [55] that might reasonably in your judgment be interpreted as threatening physical violence or damage to property?

A: No. People could misinterpret a lot of things that I said.

Q: Even jokingly?

A: No, I can't recall. They may, I don't know. They may take me different ways, different people probably see me in a different light.

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Q: You indicated that you believed that there was an excessive amount of publicity surrounding the negotiations of 1993, what did you mean by that, Mr. Kane?

A: Well, there was a lot of comments about our proposal. As I pointed out earlier, one or two school directors had said that they were going to do certain things when the teachers sat down to negotiate. They telegraphed their message in

advance of negotiations. And then the thing just got out of control with everybody—or with the Board, certain members of the Board discussing things that were happening. That publicity, plus the fact that there was a group of—Mr. Yocum's group was [67] formed, which was adding to the attack on teachers. So there was a lot of letters to the editor, back and forth to Mr. Yocum's group and some teachers, or supporters of teachers. So there was a lot of publicity devoted to our negotiations. Our negotiations were usually the leader in the area, so that anything that was said about Valley West doing away with fringe benefits, attacking the teachers, generally, applied to our school district, because we have a pretty good school district.

Q: Who attacked the teachers?

A: Well, sometimes people would write letters to the editor. School directors at various times would say certain things.

Q: Do you remember anything specific?

A: Well, let's say, teachers—the people that wrote letters that said the teachers should get no raise, there should be no increase. Teachers aren't doing their job. This is coming from people who, I felt, were not in a position to say that, they had no proof of that. If they wanted to talk to the teachers, they simply could have sat down with us and talked to us, and find out what it was they were objecting to. Nobody ever talked to us about any of this. It was all in the press. And the whole thing built up a great deal of animosity. Then there were petitions that were passed around, people signing them, [68] the same people signing two (2) or three (3) times. They claimed they had four thousand (4,000) signatures. Many of the names were repeated. All of this added to the thing, and then we had School directors inviting people to the School Board meetings from out of the area, to come and tell the citizens of the Wyoming Valley West School District how to

run their schools. We had people from Dallas and Wyoming invited by the School Board to come in and make that decision. That usually doesn't happen in normal circles. Usually, the people in the community decide what happens at a School Board meeting, not people from another town. It was rather a unique series of events that took place in Valley West. It never took place any other place that I know of. We have that record.

Q: What was it that made it unique, Mr. Kane?

A: Just what I said.

Q: Which specific thing made it unique?

A: I just started to renumerate. You don't ask people from other towns to come into a . . .

Q: And that is what made it unique?

A: Well, that's very unique.

Q: Letter writing isn't unique, is it?

A: Well, it doesn't happen. I am sorry to tell you, it doesn't happen in most places. Government doesn't run that way—not that way. Not coming to tell a local [69] School District how to run their schools.

Q: Now, other than that, you are unfamiliar with letters being written about teachers during negotiations?

A: Oh, I am used to that, I am used to letters. I am used to that, that added to the volatility, I guess, if you want to call it that, of the problem that we had. And there were letters that answered it, too, of course, you know.

Q: And those were written by whom?

A: Oh, different people—citizens. Some were written by teachers, some teachers responded to them, and some didn't even bother responding.

Q: Did you ever discuss with any members of your Local, the possibility of writing letters to the paper in response?

A: Oh, I might have asked some people, and said, hey, if you don't like what you read in the paper, then write a response to it. Yes, I said that many times to our teachers.

Q: So you were a part of this publicity that surrounded the negotiations?

A: Not a big part. I tried to keep to the subject that we were dealing with, the actual cost. I didn't think as a negotiator in the process I should be sending letters to the editor every time something appeared in the paper.

Q: But you did ask others to do it on your behalf?

[70] A: I said if they would, yes. I thought it was a good way, that the thing deserved an answer.

Q: And to your knowledge and recollection, did they do that?

A: Some did, some did.

Q: Now, you said that in addition to individuals writing letters to the newspaper attacking teachers, that certain Board Members would make statements attacking teachers. Can you tell me, specifically, which Board Members made statements attacking teachers?

A: Well, I don't have all of the publicity in front of me, but one of the things they attacked was our salary demand. They knew that we had asked for a ten percent (10%) increase.

Q: When did they do that publicly?

A: That was done the night of our first negotiation.

Q: When was that?

A: We met—our first meeting was in February. I'd have to look up the date—February it was.

Q: And how did you feel about that?

A: It was unheard of.

Q: Did it make you angry?

A: Well, certainly.

Q: Very angry?

[71] A: Just upset. I've gone through negotiations before. I can't get upset about everything I read in the paper.

Q: Was there anything . . .

A: It annoyed me.

Q: Was there anything else that was done during the course of the negotiations which you felt was unprecedented?

A: Things connected with the negotiations, I'd have to think about it—I may not be able to think of it, and the way the negotiations were being conducted.

Q: Were teacher salaries and benefits published in the local newspapers during the course of the negotiations?

A: Yes.

Q: Had that been done previous, to your recollection?

A: Yes, in my career, my salary has been published three (3) different times. I am used to having my salary published, so it didn't bother me, that doesn't bother me as much as it might bother younger teachers. They get upset when other people are making more than their salary.

Q: And did it bother some of your members?

A: It did, yes.

Q: Did they talk to you about it?

[72] A: Oh, yes.

Q: Did you feel an obligation as their representative to do anything about it?

A: Well, what was I going to do?

Q: I am just asking if you felt that there . . .

A: It's the press, but we are public servants. We are paid by taxpayer money, the same as a lot of people, and if they wanted to put our salaries in the paper, I guess there is not much you can do about it. But my salary has been published before, so it didn't bother me at all. I was used to that.

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Q: Now, when these petitions were circulated and signed, did you review the petitions?

A: Yes.

Q: What did you do after you reviewed the petitions?

A: I know the people who signed them. There were a lot of people there that I knew.

Q: Did you talk to any of the people that signed it?

A: Yes.

Q: Who did you talk to, do you remember?

A: No, not really.

[75] Q: Did you talk to several people about it?

A: Yes.

Q: What did you say to them when you talked with them?

A: Well, I told them I was concerned why they had signed it. They used an excuse that they really didn't know what it was.

Q: Did you encourage other members of your Local to review the petition?

A: Oh, absolutely.

Q: And did you encourage them to talk to people that had signed it?

A: If they knew the people, yes.

Q: But if they didn't know the people, did you encourage them . . .

A: No, I don't think so.

Q: Did you ever encourage anybody to call business people that had signed?

A: If it was a business and they knew them, yes.

Q: What did you encourage them to say to the business people?

A: Well, if they felt that way about it, the teachers getting overpaid, then they didn't need the teachers' money in the business, the line of work that they were in. A very obvious way to do it, it's the only way unions can [76] react.

Q: How many teachers do you believe you told to do that?

A: A lot.

Q: During what months would you have done that?

A: Again, I don't know, but I told people to get to the source, to the people that signed it.

Q: And to, basically, tell them not to patronize their businesses?

A: Whatever they want to tell them, tell them they were dissatisfied, whatever way they knew how to explain it.

Q: Didn't you say just a moment ago that if they didn't—if they felt that way about teachers, that they didn't need their money?

A: That's what I told the teachers.

Q: Right, to tell the business people?

A: Yes, but that doesn't say they didn't patronize them. I would assume that they didn't patronize them.

Q: And did teachers report back to you that that they had done that?

A: Many of them did, yes.

Q: Did you encourage them to do anything other just told me?

[77] A: If our teachers saw the name of a business person and it got around, let's say a restaurant owner that would be getting thousands of dollars from the teachers, both at private parties, faculty parties, different things the school had, and he signed it, he knew we were concerned.

Q: How did he know?

A: The teachers called him. The teachers did it on their own. In some cases, they had a party and they cancelled the party.

Q: Did you ever have a meeting at which you discussed calling these people?

A: I may have.

Q: Did you?

A: I may have. I don't know. I have a lot of meetings with my teachers.

Q: Do you have any specific recollection of encouraging teachers to make those types of calls in a meeting?

A: I did it as a matter of course. Everybody felt the same way, it wasn't—they didn't need much encouragement from me, because they were very upset when they saw names of their family physician, you know.

Q: What would you have encouraged them to tell their family physician?

[78] A: They were upset. That a guy that is making four hundred and fifty thousand dollars ($450,000) a year is upset with somebody that's making thirty-five thousand dollars ($35,000) a year.

Q: Would you have encouraged the people to tell the physician that they were going to go elsewhere?

A: That was up to them, that was up to the individual.

Q: Did you ever encourage . . .

A: Some did that, too.

Q: Did you ever encourage them to do that?

A: I can't recall that I told them to do that.

Q: Do you recall encouraging them to do that?

A: If they felt that that was what had to be done, that was fine with me.

Q: Is that what you told them?

A: Yes. Well, it was just some way to fight back after what they did with the petition.

Q: I am just asking you what you said, that's all, and you told me you didn't remember . . .

A: Sometimes I—I told them to do what they had to do. My members pretty much understand what I say to them. I don't have to spell it out to them.

Q: Did you ever encourage your teachers to call business people or physicians or other people in the [79] community who had signed these petitions, at home?

A: At their home?

Q: Yes.

A: Not that I know of, no. Not that I recall.

Q: Did you ever encourage members of your union to talk to members—let me see if I can phrase that a little better did you ever encourage members of your union to talk to family members of people who had signed the petition?

A: Oh, yes.

Q: And would you characterize that as a matter of course, as well?

A: Of what?

Q: Of course. You said previously that you just did that as a matter of course?

A: Yes.

* * * *

Deposition Testimony of Teresa Elison, August 22, 1995

[8] By Mr. Brobst [Attorney for Defendants Frederick W. Vopper, et al.]:

* * * *

Q. Let me show you what's been previously marked as Deposition Exhibit 1, and ask if you can tell me, for the record, what that is.

A. This is a piece of what we would refer to as collateral, which is handed out to customers, giving them some education on how—you know, how and what to expect from their cellular service. Includes, you know, how customer calling features would work, how [9] their bill may look, different areas where they can use their phone in a roaming situation, and what numbers to contact to establish that service.

Q. At the time that a customer purchases your service, is he given a copy of the current customer guide?

A. Yes.

* * * *

[11]

* * * *

Q. Are your sales staff people directed to make any comments about the privacy or security of phone conversations when using a cellular phone?

A. To my knowledge, they're not directed to do so, no.

Q. So they don't bring up the topic unless the customer asks, basically?

A. I'm sure if the customer asks, they would be able to respond, but I don't think, typically, that that's part of the sales presentation.

Q. And you are aware of what the company answer, if that's the right word, is to those kind of inquiries, what kind of response they are to give? Is it along the lines that Mr. Horinko testified?

A. I'm not—to answer your question. I don't know what their response would be. If I had to make [12] an educated guess of how they would respond, it would not be to the technical degree that Mark answered it. It would be more to what's in the customer guide.

* * * *

[18]

* * * *

Q. Did you ever receive, to your knowledge, or did your company ever receive any complaints or inquiry from Edward Bartnicki or Gloria Bartnicki?

A. I don't recall the name at the time. I believe it was Gloria. I guess that she's the one; I'm not sure.

Q. She was the one who in this case had her conversation apparently recorded. So, do you remember—can you relate to me the substance of that conversation as you recollect it, what she said to you, what you said to her?

A. I believe we spoke maybe two, possibly three times. The first time she had called in, it was towards the end of the day, and she wanted to know if it was possible that a cellular phone conversation could be intercepted. At that point I didn't know how to answer it, or was not, you know, technically aware of how to answer it. We hung up, and based on that, she was going to call me back in a few minutes, after [19] I had checked with some of our people to find out if it was possible.

I believe, at that point, I had contacted our general manager and asked if he had knowledge whether it could be

intercepted. His answer to me was that yes, he thought it could be, but what was involved in doing so, he didn't even know.

Q. And who was your general manager?

A. Still, current general manager is Vince Hedrick. I believe Gloria contacted me back, and I told her at that point that yes, we thought it would be possible, but we were trying to contact some of our switch personnel, our technical personnel, to find out what needed to happen or what was involved in having those conversations; could it be one-way, could it be two-way.

I don't recall whether we spoke to our technical people that night or the next morning and clarified it, that, again, it was possible to be done. The equipment involved would need to be sophisticated, that there is—I know I definitely relayed to her that there was two different frequencies that were being transmitted at the time, and the equipment being used would have to adapt to both sets of frequencies in order to hear the completed conversation. And to [20] my knowledge. I think that's the last time we spoke about it.

a. Did you mention to her, you know, the type of equipment somebody would—could possibly have to do this? For example, you mentioned to her a scanner.

A. I may have used the word scanner. Outside of that. I would't know what specific equipment would have needed to be used, no.

* * * *

[22]

* * * *

Q. Did she indicate to you she was surprised that someone would have been able to do this?

A. I don't know that she indicated that. It may—I would have to draw, I guess, assumption that she was excited about it.

Q. She was upset about it?

A. Right, that it was probably surprising to her.

* * * *

[28] By Mr. Aritz [Attorney for Defendant Jack Yocum]:

* * * *

Q. I take it from your earlier testimony that when Gloria Bartnicki, for example, called you and asked you if these calls could be intercepted, you had to think about that for a while, and then you deferred to someone else. You called and—I think you said you called your service person or manager or whatever and asked then if it could be done?

A. Yes.

Q. So you didn't really answer her specifically or directly; you wanted to make sure that you had the right answer for her?

A. Yes.

Q. But if you look—I'm just looking at Exhibit 2, which is the service order relative to the Bartnicki phone. which was dated back July 28 of '89. And if you look at Paragraph 10 on the "Terms and Conditions" portion, which reads "Privacy: Customers advised and acknowledges that phone calls made on [29] company cellular telephone network are broadcast over the airways and may be intercepted and overheard by third parties without the knowledge of customers and the other parties to customer's phone calls." So it would be pretty clear, even back in '89 that your company made that well-known to any customer who had purchased service or equipment that it can be intercepted because of they're over the airwaves?

Mr. WENDOLOWSKI: Object to the form.

A. Yes.

* * * *

[34] By Mr. Wendolowski (Attorney for Defendants Frederick W. Vopper, et al.]:

* * * *

Q. If I can direct you to Exhibit 1, the manual, on Page 11, the section that talks about privacy.

A. Yes.

Q. First of all, with regard to this manual itself, Mrs. Elison, this is a document that the company gives to its customers?

A. Yes.

Q. If I can direct you to the first sentence under "Privacy", it reads as follows: "It is illegal [35] to monitor a cellular phone conversation." It would be fair to say that, by inserting this language in this document, the company was attempting to instill in its customers the idea that it is illegal to tape these conversations—or to intercept these conversations?

* * * *

A. And I'm not sure I can answer your question. That section was probably written under the advice of our legal counsel. What they were attempting to accomplish at that point, I don't know.

Q. And how about the next sentence, where it says "It is also extremely difficult."

A. Uh-huh.

Q. What was the company attempting to convey to the customers by including that?

[36] A. Again. I don't know. It was—you'd have to find the party or parties that came up with that specific verbiage, and what their attempt was at that time.

Q. Look at the second paragraph of that. It says, after the first comma, ". . . it is highly unlikely that anyone attempting to monitor your conversation could locate your assigned channel."

A. Uh-huh.

Q. Do you see that language?

A. Yes.

MR. BROBST: What's the—

MR. WENDOLOWSKI: I'm just directing her attention.

MR. BROBST: Oh, okay.

Q. What's your understanding of what the company is communicating to its customers with regard to that language?

MR. BROBST: I have the same objection.

Q. You can answer.

A. Are you asking for my impression or what the company is trying to give to the customer?

Q. Well, let me break it down both ways. First let me ask for your impression; then we'll ask as a representative of the company.

[37] MR. BROBST: I object to the form of the question.

Q. You can answer.

A. I can't answer the part of what the company is trying to represent, because again, I don't know who wrote it or what the intent was. Personally, if I were reading this, it would tell me that it was difficult for someone who's attempting to monitor my phone conversation to be able to do so.

Q. Assuming you were a customer and read this language under the privacy section, would you have an expectation that your telephone conversation on your cellular phone was private?

MR. BROBST: Objection to the form of the question.

A. Myself personally, no. I don't think I would make that assumption. I know, I may. That's almost a conflict, for me to pretend I'm a customer but be a company representative.

* * * *

[38]

* * * *

Q. What is your position with the company?

A. Currently? Internal Procedures Manager.

Q. And how about when Ms. Bartnicki first spoke with you?

A. I'm not sure of the time frame. I could have been the Customer Operations manager.

Q. So it would be fair to say that you then, as Customer Operations Manager, back when you first spoke to Gloria Bartnicki, and that's manager of Cellular One, were somewhat surprised with regard to the fact that this conversation was intercepted.

MR. BROBST: Objection to the form of the question.

A. Yeah, and I don't know that surprise would be the word I would use. I've known, since the onset of my employment with Cellular One. you're dealing with radio frequencies. How it could occur or what [39] equipment could be involved to make it occur is what I needed to go find out in order to answer what I thought was satisfactory to Gloria's question.

* * * *

[40]

* * * *

Q. Do you have any personal knowledge of anyone at Cellular One, at any point Ms. Bartnicki's conversation being intercepted, communicating to her the fact that her conversation could be intercepted?

A. To my knowledge, no.

Deposition Testimony of Kathryn Bozinski, August 22, 1995

[12] By Mr. Aritz [Attorney for Defendant Jack Yocum]:

* * * *

And at some point as I was formulating the story to be on the 6 o'clock news, given the nature of the tape, the [13] question as to the authenticity of it, and as well as the means by which it was gained. I consulted with two members of the staff, and we listened to the tape at that time, in an audio production room.

Q. And who did you consult with?

A. With John Bendick, our assignment editor, and Keith Martin, the anchorman.

Q. And after your consultation with those two gentlemen, what was the decision made concerning what you were going to do with this tape?

A. I believe that John Bendick may have consulted our attorney, Mr. Brobst, as to how it should be dealt with. At this point we decided not to play specific excerpts from the tape, but we did graphically, which means in letters on the screen, with me reading the graphic, quote a segment—either one segment or—I think only one segment from the tape, but we did not actually play, at full volume, the tape itself, on the air.

Q. Do you remember what segment you graphically put on the screen?

A. Yes, it was the reference to blowing off porches of school directors.

Q. Now, in your capacity as a newsperson, did you consider this tape newsworthy?

[14] A. Yes.

Q. That—would be fair to say why Mr. Bendick had dispatched you to WILK, so you could get a copy of this tape?

A. Yes.

* * * *

Deposition Testimony of Mark Horinko, August 22, 1995 [15]

By Mr. Brobst [Attorney for Defendants Frederick W. Vopper, et al.]:

* * * *

Q. Okay. How else could it be intercepted, a signal from the car to the tower?

A. And I'm not specific on the dates; you probably know better than me, but within my ten years in the industry, there was a point in time that you [16] could buy scanners off the shelf that would intercept cellular telephone calls. I don't know what the date was, but I know today when you buy a scanner, those particular frequencies are not available within the scanners.

Q. So when they buy the scanner, the frequencies that they use for the cellular phone transmissions, they don't put into the scanner?

A. That's correct.

Q. Do you know what the date was when they made that change?

A. I don't. I really don't.

Q. But the older scanners that people still own would still have the ability to intercept that radio signal between the car and the tower; is that correct?

A. That's correct.

Q. And I guess somebody could buy a scanner and if they knew something about electronics, they could adapt it so that they could get those frequencies; is that correct?

A. That happens—yeah, I've seen that happen.

Q. And when you say "scanner," could you just, for the record, explain what you mean by a scanner?

A. It's a receiving unit that would interpret radio frequencies off the air to intelligent [17] conversation.

Q. So it would just pick up whatever radio signal was within its range of the scanner when they had it on, at random?

A. That's correct. The only other device I know that would be able to do that would be older televisions that had UHF dials, given that the frequencies that were allocated for cellular came from TV UHF channels.

Q. Could you explain, for the record, that the UHF channels were? How did they work? I mean, what was a UHF channel?

A. UHF was used for television. and I want to say it's from like channel 69 to maybe channel 90, and I'm not specific what channels they were. I want to say they were Channels 80 and 81, that the FCC took from television and gave to cellular. So older televisions, before cables, that still had the manual tunes, you could tune in cellular telephone conversations.

Q. Again, would you just get those at random or by just having the TV on, tuned to those channels? Would you have to do something else to—

A. You'd have to turn to those particular channels and fine-tune to intercept a telephone [18] conversation.

Q. When you say "fine-tune," what would you have to fine-tune?

A. I mean, just to—the knobs. In the older televisions. They used to have a tuning device on the television.

Q. The purpose of which was to—when you say tune, what were they tuning? They were trying to—I mean, once you turn to the channel—

A. Oh, it was originally designed for tuning in television stations or channels.

Q. Oh. You mean, after you got it on the right channel, just to make the picture better?

A. That's correct.

Q. In other words, to get the signal tuned into the TV better, if that's the right word?

A. Yep.

Q. Okay. And so there are—do you know when they stopped making those—I'm sorry, strike that. Do you know when the FCC took those UHF channels and reassigned them—

A. To cellular—

Q. —to cellular from TV?

A. Cellular started in the 1983, '94 (sic)—yeah. '83, '84 time frame. So I would say, you know, [19] venture a guess that it was somewhere in that time frame that the FCC reallocated that spectrum.

* * * *

[21]

* * * *

Q. Now, would it be possible for someone to focus on a particular individual as opposed to doing this at random? You know, just picking up phone calls at random? If you wanted to try to monitor the cellular phone calls of a particular individual, a particular car, for example, is there any way you could do that?

A. No, there's no specific means to target an individual by off-air monitoring, no.

Q. In this case. We have a case where there was a phone conversation recorded by a person who was using a car phone, sending it back to a person either, he said, at his home or office, not using a cellular phone. And not only did they intercept it. but they were able to record it. And basically, you're [22] indicating to me that they must have discovered that conversation by accident, by random, as opposed to some way being able to have focused on it in same way, you know, focusing on that person?

A. Yeah. I mean, it would have to be at random, beause the channel selection algorithms that we use in our sites, you know, to pick channels out is pretty much a random process.

Q. So, as I understand your testimony, you're saying that it would be very difficult to try to focus on a particular person and intrcept their phone calls; is that correct?

A. On a particular individual.

Q. Right. But I also understand you're saying it would be very easy just to randomly listen to cellular phone conversations?

A. That's correct.

* * * *

[28]

* * * *

Q. But it would be a lot easier though, obviously, it you lived in an area where there was a tower with only eight or nine channels, to monitor anybody's conversation passing through that particular area?

A. Yeah. And within those—again, we can use any eight of 350 channels on that site.

Q. Right. What do you mean any eight of 3—oh, oh, okay.

A. We have 350 different channel assignments that we could use, any eight of those.

Q. So they'd have to figure out which eight you're using in that area. Now, does that change from time to time, or do you have the same eight channels, say, assigned to a particular tower all the time?

A. They change—you know, maybe every three to six months, we change channel assignments.

Q. So every three to six months, you change the channel assignments for a particular tower area?

A. Yep.

[29] Q. And that's on all your towers?

A. That's correct.

Q. And that's done in order to try to—strike that. Why is that done?

A. Just to—for capacity, as you—you know, to allow us to reuse frequencies as we bring on new sites. We might have to use a set of frequencies or set of channels on Site A, and we'll use the same channels on Site D. Okay? So, you know, we reuse those same channels over and over again.

Q. Now, as you're traveling and the signal gets handed off to the next tower, does the channel change, or would it be handed off, at first, to the same channel?

A. No, the channels will change as the call is handed from site to site.

Q. So if I'm listening in on a phone conversation, and the caller gets to the point where that signal's handed off to the next tower, I will lose that conversation at that point?

A. That's correct.

Q. I'll have to then find—

A. You'd have to—

Q. —what the new channel is that it's now on; is that correct?

[30] A. That's correct.

* * * *